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IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT.

No. 13756.

VIKING THEATRE CORPORATION,

Appellant,

v.

PARAMOUNT FILM DISTRIBUTING CORPORATION, et al.

Appeal From the Judgment of the United States District Court for the Eastern District of Pennsylvania.

JOINT APPENDIX.

Volume II (Pages 469a to 914a).

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TWELFTH DAY

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(1749)

JAY WREN, resumed.

CROSS-EXAMINATION (Continued)

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By Mr. Nizer:

Q. Mr. Wren, yesterday I was discussing with you the question of changing availability dates and asking you whether it isn't an inherent practice in the exhibition business that when you have some difficulty with bookings and dates that availabilities are moved forward or backward on various occasions. Do you recall that? I will call your attention to that testimony, because I want to ask you something about it.

A. Yes, sir.

Q. I just want to fix that in your mind, if I can.

I think you told us yesterday that you very rarely move a picture forward or backward on availability date, that your availability dates are the dates originally of the bids. In other words, that you play it on availability except for very rare occasions. Do you recall your testimony on that?

A. I believe what I said was that they always insist that the Viking Theatre opens a picture on availability. Before

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we are ever awarded a picture they firm up the opening date with us.

Q. That is what you told us.

A. Yes, sir.

Q. And I think you emphasized it by saying you could count the exceptions on two fingers. Do you remember your phrase about that?

A. I believe I did, yes, sir.

Q. Now I want to call your attention to the GLASS SLIPPER. You have your schedule before you, I notice.

A. Yes, sir.

Q. That was available April 8, 1955, and you opened April 13, 1955, right?

Mr. Sawyer: Could we have the documents?

A. Yes, sir.

By Mr. Nizer:

Q. PRODIGAL, that was available May 6, 1955, it opened May 11, 1955, right?

A. Yes, sir.

Q. WIZARD OF OZ, that was available July 8, 1955 and opened June 23, 1955, ahead of it about, oh, well, let us say, 15 days, right?

A. All agreed to with Metro at the time it was purchased.

Q. I have no grievance. I have no grievance about it.

(1751)

A. Well, I want to explain, if I may, sir, the way it is. When we buy a picture from Metro or any other companies they want to know when we are going to open the picture, regardless of availability date given to us on any solicitations, and it is always firmed up with us before.

Q. You told us that. I understand. I am just asking you, nevertheless, whether the availability wasn't July 8 and you opened it June 23, about 15 days ahead.

A. WIZARD OF OZ?

Q. Yes. In order to fit into the week that you had between, was it PRODIGAL and NOT AS A STRANGER.

A. We never had an availability date on this picture, sir. This picture was a last-minute booking. Metro, as

you will remember, sir, never sent out solicitation letters. This was always by telephone.

Q. Let us go on. We will have the record.

A. Yes, sir.

Q. LUCY GALLANT, available October—coming back to WIZARD OF OZ, I have the record here.

A. Right, sir.

Q. I show you the national release schedule which is sent out by every company on all of its releases.

Mr. Sawyer: Oh, well—

The Witness: No, sir, it is not, sir.

(1752)

Mr. Sawyer: No, I object to that, sir.

The Witness: You can't show me one that was sent to the Viking Theatre.

By Mr. Nizer:

Q. I beg your pardon?

A. You can't show me one of those sent to the Viking Theatre.

Q. Do you keep release schedules of every company in your files?

A. No, sir, we do not.

Q. You have never seen the Metro release schedule?

A. We do not get release schedules from Metro—

Mr. Nizer: Oh, now, let's—

Mr. Sawyer: He is answering, Mr. Nizer.

The Witness: I am answering—

Mr. Nizer: —I know you are.

The Court: The question was, have you ever seen one?

The Witness: I have seen one, yes, sir.

By Mr. Nizer:

Q. And you not only have seen it, you have seen it prior to the time that you book your pictures, isn't that the regular practice?

A. No, sir, it is not. During the period of this suit Metro

(1753)

would advise us by telephone, and subsequently say, so-and-so releases, by letter, but never any release schedule.

Q. Well, I haven't any doubt that they advised you by phone. That is the way you do business. You send telegrams though, don't you?

A. No, sir. They send telegrams, too, sir. You read me a few of the telegrams that the distributors have sent me.

Q. In answer to yours?

A. No, prior to mine. One of them Mr. Zagrans complaining he couldn't reach me by telephone, so he sent me a wire.

Q. Because he couldn't reach you by telephone?

A. So he said.

Q. Coming back to this, Mr. Wren, isn't it a fact that every exhibitor, particularly first-run exhibitors, obtained from either the branch manager or from the trade publications which publish it—I will stop there and ask you, isn't it a fact that even the trade publications publish the schedules of releases of pictures in advance?

A. By months.

Q. By months. And you see that, don't you?

A. By month. Not by availability date, sir.

Q. By month, with the availability dates on releases on the schedules, it is a service to the exhibitors, isn't it?

(1754)

A. No, sir. The magazines that you are speaking of, such as Film Daily or those, they list them by month, in groups.

Q. In other words, the availability of the month rather than the day, is that right?

A. Yes, sir.

Q. And you get that information in advance?

A. In the trade papers, yes, sir.

Q. And you look at those?

A. Yes, sir.

Q. And so you knew that the WIZARD OF OZ was to be released in July, let us forget this precise date; right?

A. I don't believe so, sir. That picture was obtained from Metro when we needed time to fill in. I don't recall ever seeing a release schedule on WIZARD OF OZ.

Q. I show you this schedule and ask you whether a copy of this isn't in your files?

A. I don't believe so, sir.

Q. Are you sure?

A. No, I am not. I said I don't believe so.

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(1755)

Q. LUCY GALLANT, available October 26, 1955. When did it open?

A. October 6 at Mr. Ted O'Shea's suggestion for a World Premier and a tie-up with P.A.L.

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(1757)

Q. We will do it on this one anyhow. You said it was what date, the availability?

You were right. What was the date you gave?

A. October 26.

Q. All right. Now look at that document. That is the document that confirms that you were right on that without looking at it, correct?

A. Yes, sir.

Q. All right. So you opened that picture 20 days before availability?

A. I explained—

Q. That is my question. Will you answer my question first?

A. Yes, with an explanation.

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(1758)

Q. Now do you want to do it with an explanation again?

A. Yes, sir.

Q. All right, go ahead.

A. Mr. Ted O'Shea, who at that time was general sales manager, phoned and said that they were arranging a tie-up with PAL for the opening of the picture in Philadelphia and he wanted to open it the 6th because of that tie-up.

Q. In other words, Mr. Wren, if this will help, so that we don't have to take time on each one, there is always a good business reason; there is no malice either on the part of the distributor or the exhibitor when you don't play on availability date, isn't that right?

A. Yes, sir, again with an explanation. We have no objection to the fluctuating of availabilities if we are accorded the same privilege.

Q. Yes. Now all I am asking—

A. If we are advised of changes we are perfectly in accord with that. We want the same treatment anybody else gets.

Q. In other words, you do not—talking of yourself for a minute, that is all I am asking you about—you do not make any claim or grievance about the fact that either you or the distributor for the ordinary business reasons in the complicated business of booking, changes the availability date? That is all I am asking. I am not accusing you of

(1759)

anything you understand, Mr. Wren.

A. With one exception.

Q. You want to have an explanation for the exception?

A. Yes, sir.

Q. Give it.

A. If availability dates are changed and my competitors and I are not advised of that it is unfair. If they are changed and everybody has an equal opportunity for the picture on the change of availability date, we have no objection whatsoever to it. It is the idea of moving up a picture so that the competitor is back in the market again.

Q. Was everybody advised of this change that you are talking about, to your knowledge?

A. I do not know.

Q. So you are not making an charge against them?

A. No, sir, I am not.

Q. All right, let's get back to basics.

Mr. Wren, all I am saying to you is that there are more than two fingers that you can count where changes of availability took place at the Viking Theatre at your behest, at the distributor's behest, for business reasons. You don't have to give me all the explanations. I am not accusing you of anything. But availability dates are changed in this complicated business, aren't they?

(1760)

A. They are changed, surely.

Q. All right.

A. That is what we are complaining about, sir.

Q. Well, you are back to "complaining about." Let's go on and see how many more times more than the two fingers.

THE BIG KNIFE, what was your availability? November 9?

A. That's right.

Q. 1955?

A. Right, sir.

Q. If you want the document I will get it out any time you say.

A. No, you are right.

Q. All right. And it opened November 23rd. That is 14 days later, right?

A. Yes, sir.

Q. Do you want to make an explanation about that?

A. Yes, sir. It was purchased for Thanksgiving.

Q. Good. So that was another good business reason for change, wasn't it?

A. Yes, sir.

Q. Who purchased it for Thanksgiving?

A. We did.

Q. And you wanted it changed for a good business reason,

(1761)

in order to have it played a little later so you would get the holiday out of it, right?

A. That's right, and because we didn't get SECOND GREATEST SEX.

Q. All right, that is another reason.

A. Right, sir.

Q. DESERT SANDS, available October 19, 1955 and it opened September 21st, correct?

A. Yes, sir.

Q. So that is a difference of about 29 days, 28 days earlier.

Do you want to make an explanation, or are you willing to goson?

A. Agreed with United Artists there that that was the way it was purchased.

Q. Fine. As a matter of fact, in that case, in that particular case, do you mind if I make an explanation?

A. I would be glad to have one.

Q. You asked United Artists to move this date up so that you could play this immediately after NOT AS A STRANGER. Do you remember that?

A. Yes, sir, and—

Q. It was perfectly reasonable. I have no grievance again.

(1762)

A. I would like to explain something else.

Q. All right. Do you want to explain my explanation?

A. Yes, sir, I accept your explanation. Now accept mine.

While I was in the office Mr. Tunick called Stanley Warner to advise them of that.

Q. That was fair, too, wasn't it?

A. Yes, sir.

Q. So you have no grievance there?

A. No, sir.

Q. And that was done at your request and there was a shift of 28 days, right?

A. Yes, sir.

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(1763)

Q. CAMANCHE, available March 28, '56 and opened April 6, '56, right?

A. Yes, sir.

LAST WAGON, of Fox, available September of 1956 and opened October 6, 1956, correct?

A. Yes, sir.

Q. That is about a month later, isn't it?

A. Right, sir.

Q. Twentieth Century-Fox, ABDULLAH'S HAREM, QUEEN OF BABYLON, available August '56 and opened September 18, '56, correct?

A. I think if you will remember I said that I knew that one was way off of availability. It was purchased after all bids.

Q. Yes, so there was a shift of over a month there, right?

A. Yes, sir.

Q. Now, I will continue this. Can we cut this short with one question, Mr. Wren? I think you will agree with me. In the exigencies of business, with dates to be filled, pictures playing different periods of time at different times of the year, being booked and bought, the schedules to be fixed up, sort of meshed, it is natural and inherent in the business that either the distributor or exhibitor will on frequent

(1764)

occasions shift the availability date to accommodate the business purposes of both or either one of them, correct?

A. If all are advised, correct.

Q. All right. And the only grievance you now have is about something at this moment on any of these pictures that you are not charging, either in your grievance pretrial or anything else on these pictures, namely, that you would like everyone to be advised?

A. Yes, sir.

Q. But so far as you are concerned, and your treatment, you have no feeling about this or grievance, provided everyone else is advised?

You are worrying about all the other people as well as yourself, is that it?

A. That is the only way it can be fair, sir.

Q. I see. With that exception you have no grievance on availabilities?

A. Yes, I have. On SERENADE.

Q. Well, with the exception—we will come to SERENADE.

A. Yes, sir.

Q. Now, you also testified yesterday that certain theatres pulled the picture.

A. Yes, sir.

Q. I think we ought to explain to His Learned Court and

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to the jury what pulling a picture means, Mr. Wren, and I think you can explain it.

Let me ask you a question so as to make it clear. When a picture is bought and booked, very often it has a minimum playing time, let's say of three weeks or—

A. Right, sir.

Q. —let's take ten weeks as a better illustration. And that is the obligation of the exhibitor to play it for ten whole weeks so the distributor can get more revenue out of there, if possible?

A. Yes, sir.

Q. Then despite that contract, if the exhibitor wishes to pull out the picture before the ten weeks, maybe because it is doing badly or because he has another good attraction coming in, maybe again many business reasons, and if the distributor permits him to pull it out, that is called the pull-out, is that it, in other words, taking it out before the time expires?

A. If the distributor agrees, yes, sir.

Q. Of course. Now, that was what I think you were complaining about, that other exhibitors have pulled out pictures?

A. Yes, sir.

Q. That was your grievance?

(1766)

A. Without the agreement

Q. Without the agreement?

A. Of the distributor.

Q. Assuming for the moment that that is any of your business—I don't mean to be insulting—but assuming for the moment that that is your business, have you done the same thing?

A. I don't see any instance of it, sir.

Q. Well, see if I can help you. Do you remember any without the list? That is, I don't mind your looking at the

list but you seem to be just looking at the list. Would you recall, aside from the list? And you can look at the list. I want you to get every help you can.

A. I did look at this list.

Q. You can look at it.

A. I say I did look at it, sir.

Q. Oh. You can't think of any?

A. No, sir.

Q. Let's see if I can refresh your mind a bit.

A. Good.

Q. On HIT THE DECK, that is a Loew's picture?

A. Yes, sir.

Q. Your contract provided, did it not—may I have 51, please?—that you would play this five consecutive weeks?

(1767)

A. That's right, sir.

Q. Do you recall that?

A. Yes, sir.

Q. Then there was a special clause which I would appreciate your making clear to the jury, and that is that if the receipts equal or exceed $7,500 on the fourth week, the picture will be played a sixth week.

A. Yes, sir.

Q. Now will you please explain that to the Court and jury. What does that clause mean in practical terms, if the receipts equal or exceed $7,500 on the fourth week—it is to play five weeks—but if it reaches that figure on the fourth week it is to play a sixth week; what does that mean?

A. Just exactly what it says.

Q. If you think it is clear enough, perhaps it is.

A. Yes, sir.

Q. In other words, the five-week period, the minimum five-week period is extended and an obligation is upon you to play it a sixth week if your receipts reach a certain level on the fourth week?

A. Yes, sir, right, sir.

Q. Now look at your chart in front of you. That picture on the fourth week, did it reach $7,500?

(1768)

A. It did, it hit $8,480.

Q. So you were obligated to play it a sixth week?

A. Right, sir.

Q. Under the contract.

A. Yes, sir.

Q. Then if it reaches $7,500 on the fifth week, according to the contract you have got to play it a seventh?

A. Right, sir.

Q. All right. On six days of the fifth week did it also reach $7,500?

A. HIT THE DECK?

Q. Yes.

A. I thought it played a full fifth week, sir.

Q. Only six days, but it doesn't matter.

A. Well, I haven't got that. I have got $9,254.

Q. So it exceeded $7,500?

A. Right, sir.

Q. So you were obligated to play that picture at least two more weeks?

A. Right, sir.

Q. But you pulled that picture, didn't you?

A. With the distributor's approval. It was discussed.

Q. Well, at this moment I won't quarrel about that. My only question is, first—then you can go on if you wish—

(1769)

you pulled that picture out and didn't play the additional two weeks, did you?

A. That's right.

Q. And that was changing the terms of your contract, and you say you got the distributor's approval of that?

A. Definitely.

Q. You say so. In any event, they never sued you for the balance that would have been due them had you played two more weeks and they would have had more income out of that percentage?

A. I would have played it without their approval, I would have been obliged to.

Q. You say in each instance—let me understand that, Mr. Wren. Are you now telling us that in every instance in which you pulled the picture—and I am going to give you more—that you got the distributor's approval?

A. Yes, sir.

Q. Remember that, then.

A. Right, sir.

Q. In any event, we have an instance where you pulled it and then you went to the distributor and he agreed after, that is what you are telling us?

A. No. This is the same distributor had the next picture in, which was GLASS SLIPPER. This was Loew's Incorporated.

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(1770)

Q. Take the GLASS SLIPPER, without going through all the details.

A. Right, sir.

Q. Will you agree with me that that picture was supposed to do $7,500 the third week in order to hold over?

A. Right, sir.

Q. That is the phrase, isn't it, in the industry?

A. That's right.

Q. How much did it do the third week?

A. $8444.

Q. So under the contract—

A. I mean $8844, I am sorry.

Q. Under the contract you were obligated, therefore, to play a fifth week?

A. Right, sir.

(1770a)

Q. That picture was pulled on the fourth week, wasn't it?

A. For the same company's PRODIGAL. It was discussed and the PRODIGAL was going in.

(1771)

Q. Incidentally, in that case, even though your time for playing was reduced, let's say, you know that there had been a bid for that picture by one of the competing theatres before you got it, don't you?

A. What picture, sir?

Q. GLASS SLIPPER. You know that the Trans-Lux had bid for that picture, don't you?

A. I believe we found out during this case. I didn't know it before.

Q. And you know that Stanley Warner had bid on the prior picture which was pulled, namely, HIT THE DECK. You know that, too, don't you?

A. That is what I was told.

Q. Even though somebody bid against you and you got it on a specific term of playing, it was later changed, wasn't it?

A. Yes, sir.

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(1772)

Q. You are the Vice-President of this company, aren't you?

A. Not during the period of the suit, no, sir.

Q. Well, when you came into this at the time, you came in as General Manager?

A. Right, sir.

Q. And you had all the books and records available to you for inspection at all times?

A. Yes, sir.

Q. And when you testified to Mr. Sawyer, you testified to motion pictures which preceded your coming there but from the books and records of the company, didn't you?

A. Only as to gross, sir.

Q. Well, as to various information concerning those pictures. I am not criticizing that either. They are on the books and records, aren't they?

A. Yes, sir.

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(1775)

Q. Look at STUDENT PRINCE on your record, because I know you have personal knowledge of this, but your company record.

A. Yes, sir.

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(1776)

Q. What is that?

A. It is a Metro-Goldwyn-Mayer pictures exhibition contract.

Q. For what picture?

A. THE STUDENT PRINCE.

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(1780)

Q. Mr. Wren, is this your signature on this document?

A. Yes, sir.

Mr. Sawyer: Let me seethe document.

By Mr. Nizer:

Q. And did you swear to this document? See the bottom, it

(1781)

is in sworn form, your signature.

A. "These answers have been made on information and belief to be accurate."

Q. Yes. And does this document filed in this court under your signature and oath refer to the very pictures that I am talking about now, STUDENT PRINCE, all the pictures that preceded your regime but all the facts that you allege them to be concerning these documents?

A. Let me see it.

Q. Does that go back to the earliest date of the whole period in the lawsuit which you signed and swore to on information?

A. During the period from January 1, 1954-November 13, 1956.

Q. Yes, right?

A. Yes, sir.

Q. And the schedule that you have before you, that you have been looking at—do you want to look more at this?

A. Yes. Go ahead.

Q. No. Give it back to me, please. I want to give it to counsel.

And the schedule that you have in front of you, has that also the official records, is it taken from the official records of your corporate records with respect to pictures prior to your coming to the theatre?

(1782)

A. Yes, sir.

Q. Now, on this schedule you have some information, haven't you, for STUDENT PRINCE?

A. Yes, sir.

Q. And from that schedule can you tell me how many weeks STUDENT PRINCE played at your theatre?

A. Eight weeks and four days.

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(1789)

Q. All right now, sir, looking at the contract in this case, the playing time on the contract was a minimum of ten weeks?

A. Right sir.

Q. And actually the picture played how many weeks?

A. Eight weeks and four days.

Q. Now, irrespective of how that came about, that would indicate that the picture was pulled for some reason, right?

A. Yes, sir.

Q. Now, I ask you whether you know from information and belief that it was the Viking which sought an adjustment on this picture, STUDENT PRINCE.

A. I don't understand the question, sir.

(1790)

Q. Do you know from information of the corporate records?

A. Yes, sir.

Q. (continuing) That it was the Viking Theatre which asked for an adjustment on the STUDENT PRINCE, that it was the Viking that asked for it?

A. Surely.

Mr. Sawyer: An adjustment?

Mr. Nizer: Yes, an adjustment.

By Mr. Nizer:

Q. Well, you say surely. Do you want to consider that again in view of counsel's statement? Think it over again.

A. I have been told that they asked for an adjustment on STUDENT PRINCE.

Q. Who did?

A. Mr. Sley.

Q. So that it was the Viking Theatre that asked for this change in contract?

A. Oh, I don't know whether it was this particular adjustment.

Q. Or it may have been something else in addition to this?

A. Surely.

Q. But you know that?

A. Yes, sir.

Q. Now, take BETRAYED in the same way, from your records.

Let me approach it different: I show you the (1791)
contract, although you may know it without the contract; what was the provision of playing time on the picture BETRAYED, Loew's picture?

A. The playing time?

Q. Yes.

A. A minimum of five weeks.

Q. And what was the holdover clause? I think we know about what that means. If it reached a certain figure.

A. Should the gross for the fourth week be $7500 or over the picture will be held for a sixth week.

Q. Now, look at your record that you have been testifying to for Mr. Sawyer, and tell me whether it reached $7500.

A. It did.

Q. How much more?

A. $9189, another $1600.

Q. Did it play the extra week?

A. No, it only played five weeks.

Q. So that picture was pulled, whatever the reason for it is, right?

A. Yes, sir.

Q. And do you know from the records whether it was the Viking Theatre that requested an adjustment on this picture?

A. They did.

Mr. Sawyer: Your Honor, he is talking about (1792)
adjustments.

Mr. Nizer: Yes.

By Mr. Nizer:

Q. Let me ask your definition, in view of that objection.

A. Mr. Nizer, I just notice—

Q. There is no question before you. Let me put a question.

A. All right, go ahead. I am sorry, I didn't hear it.

Q. Do you claim that the pulling of a picture—in other words playing it less than the contract period provides—is an adjustment?

A. Certainly.

Q. All right. Now I ask you did the Viking Theatre ask for an adjustment in the case of BETRAYED.

A. I would assume they did, sir, from these records.

Q. That is right. So that without proceeding further, to save some time, the Viking Theatre at various times over the whole period of this litigation did on various occasions pull a picture, whatever the reason was. Sometimes they asked for it, you say sometimes the distributor may have asked for it, but whatever the reason, the Viking Theatre indulged in the practice, as do other exhibitors—I am not criticizing you know—of pulling pictures on various occasions. Is that correct?

A. Yes, sir.

(1793)

May I add something, sir?

Q. If you want to make an explanation.

A. I just noticed on this report that the Viking paid a $40,000 guarantee on STUDENT PRINCE. The picture did not earn that kind of money, it only earned $36,935.

Q. I do not think that is responsive to anything. If you want to say it, I will not even move to strike it.

And when you testified yesterday that only in one case, I think you said, as Mr. Sawyer just said, can you recall that matter, now that your memory has been refreshed, there are many more than one case, aren't there? All these instances, right?

A. What I referred to is one case where we took the picture off against the distributor's wish, which was LAST WAGON, the one I can remember with Twentieth Century-Fox, and though the contract didn't call for any more playing time they asked me repeatedly to keep it for a second week.

(1794)

Q. Now let us take another instance of a different character: NOT AS A STRANGER was a United Artists picture, that is that Frank Sinatra picture?

A. Yes, sir.

Q. And under the contract United Artists had the option to terminate the run on two weeks' notice; is that correct?

A. Yes, sir.

Q. And on the ninth week United Artists notified you that the run would be terminated on the 11th?

A. Right, sir.

Q. And it was you who asked United Artists to extend the run to the twelfth week?

A. Yes, sir.

Q. How long was that picture contracted for to run?

A. Eleven weeks.

Q. But you asked that it be extended to twelve weeks. That was your request, not United Artists, right?

A. Yes, sir.

(1795)

Q. And you arranged with United Artists to adjust the film rental for that twelfth week so that it would be less. You made a mutual agreement with them to make it less, didn't you?

A. Yes, sir.

Q. And how much less was it made for the twelfth week?

A. I think finally we paid the advertising and no film rental.

Q. No. You are going to an adjustment. Forget the adjustment. How much was the agreement originally?

A. Do you mean the terms?

Q. The terms. That is right.

A. If I remember correctly it was either 20 or 25 per cent.

Q. Twenty-five per cent is right.

Now, the rental for the twelfth week that you requested to play the film, the film rental came on that reduced basis to $1040.52, right?

A. If that is what your figures are, sir. It is not here.

Q. This had been the first pictures that you had a relationship with, with United Artists?

A. Yes, sir.

Q. And this was this blockbuster we are talking about on which you did very well, right?

A. Yes, sir.

Q. But you refused to pay the $1040.52, didn't you?

A. We asked that it be adjusted, sir.

(1796)

Q. Please answer my question first. You refused to pay the $1040.52, didn't you?

A. I don't understand you. There was no refusal.

Q. Do you understand what refusing to pay a bill means?

A. There was no refusal.

Q. Well, you didn't pay it for months, did you?

A. We went over and asked for an adjustment.

Q. No, answer my question. Don't tell me where you went.

A. I don't know how long it was before it was paid, sir.

Q. Well, it was many months and you hadn't paid the balance of $1040, wasn't it?

A. I don't recall that, sir. I would have to check the records.

Q. I will check it with you in a minute.

You say that you asked for an adjustment on the twelfth week.

A. Yes, sir.

Q. And you wouldn't pay the balance of $1040.52 unless there was an adjustment; in the meantime you refused to pay the bill, right?

A. I don't recall that, sir. I would have to look at the records.

Q. Do you mean that this matter is vague in your mind? Didn't you handle this personally?

(1797)

A. I personally handled this matter.

Q. Weren't there attorneys in this matter?

A. (continuing) With Mr. Tunick. No, there were no attorneys in this matter, sir. This was handled with Mr. Tunick.

Q. Well, let us see. The very next picture of United Artists was DESERT SANDS, wasn't it?

A. Yes, sir.

Q. And that was a picture on a sliding scale?

A. Yes, sir.

Q. And under that arrangement you owed how much for that picture?

Can I help you out on it? Some $2511 for the first week and some $1000.74 on the third week, is that right—the second week I mean.

In other words, you owed altogether, let us say for rough purposes, $3500 on the next picture, is that right?

A. I am not sure, sir, because I don't know whether these are adjusted film rentals or not on this sheet.

Q. I think on your sheet they are adjusted, but I am talking about the original amount you offered.

A. The original amount I think was 40 to 50 per cent first week and 30 to 40 the second. Is that right?

(1798)

Q. Yes. So it would be about $3500. I have the exact figures here. Will you accept them subject to check?

A. Well, there would be a $986 adjustment—you are right.

Q. All right. So you owed on the next picture for United Artists $3500 roughly. It comes out to pennies, $74.68.

A. Right, sir.

Q. And you refused to pay that, didn't you, unless you got an adjustment?

A. There wasn't a refusal, sir. I discussed the matter with Mr.—

Q. Wait a minute. Did you send a check in for the amount that you owed?

A. No, sir, I went to New York to discuss it.

Q. And while you were discussing it you didn't pay the bill, did you?

A. I don't believe so.

Q. How long did the discussions take?

A. I would have to check the records. I imagine three, or four, or five weeks. I wrote a letter to Mr. Cohen about it, at his suggestion.

Q. The twelfth week, what date was that, that you finished with NOT AS A STRANGER, just the approximate date, September?

A. I don't have—it is in September, the week ending 9/21.

(1799)

Q. And when was the DESERT SANDS?

A. 9/21, it opened with an all-day preview on the 21st.

Q. Of September?

A. Yes, sir.

Q. I show you this letter in January the next year and ask you if they still weren't dunning you for the money.

A. Now, sir, may I see the folder on this picture.

This is true what you say about this, but there has been correspondence prior to this, much correspondence, after Mr. Milt Cohen's suggestion, where he was taking it up with the producers' representatives.

Q. I will be delighted to have all of the correspondence.

A. Fine.

Q. I am just fixing a date. As far as January, you owed this bill in September, in January they were still asking you to pay it, weren't they?

A. Mr. Tunick was.

Q. Well, Tunick is the representative of the company, United Artists.

A. So is Mr. Milton Cohen.

Q. No doubt. And so is President Kennedy the President of the United States.

My question is, didn't Columbia ask you to make payment on this bill.

(1800)

A. Not Columbia, no, sir. United Artists.

Q. I mean United Artists. Tunick for United Artists.

A. Yes, sir.

• • •

(1801)

Q. Mr. Wren, we were at this point, I was asking you whether you had not held up payment for NOT AS A STRANGER the last week, the 12th week, and for DESERT SANDS, which played two weeks, unless you received certain adjustments on them. That was my last question. The answer to that is what?

A. Yes.

Q. I then asked you, I think, how long it was before you paid some part of that bill under the adjustment that was ultimately granted. Do you remember that now?

A. How long it was?

Q. Yes, before—

A. No, I do not, other than the letter you showed me.

Q. All right. The picture NOT AS A STRANGER, that and the other played in September 1955?

A. Yes, sir.

Q. Now, the last question I had before we had a recess, I asked you whether you received this letter in January '56, of the next year, still asking you for the money.

A. Yes, sir.

(1802)

Mr. Nizer: I offer it in evidence.

I have shown it to you, Mr. Sawyer.

(Letter dated January 24, 1956, to Mr. Jay Wren from United Artists Corp., Gene Tunick, was marked Exhibit D-18 (United Artists) for identification.)

Mr. Nizer: This is brief. May I have permission to read this, Your Honor, please?

The Court: Yes.

Mr. Nizer: This is a letter from United Artists to Mr. Jay Wren, dated January 24, 1956:

"Dear Jay:

"The following items still remain unpaid at the Viking Theatre:

"9/16-21 12th week—NOT AS A STRANGER	$1040.52
"9/22-28 1st week—DESERT SANDS	2519.24
"9/29-10/5 2nd week—DESERT SANDS	1074.43

"If we do not receive payment by January 30, we will not only lose credit for this amount in the Max

Youngstein Drive, but we will be penalized an additional 20% for our failure to collect this money.

"Your cooperation will be greatly appreciated.

"Sincerely yours,

"UNITED ARTISTS CORP.

"Gene Tunick."

(1803)

By Mr. Nizer:

Q. Now, this phrase ". . . we will be penalized an additional 20 per cent" that means, doesn't it, that since this picture belongs to an individual producer for which United Artists is distributing, that there is a penalty if they don't collect the money? Isn't that what that meant to you?

A. I wouldn't know that, sir.

Q. All right. In any event, this was a pretty courteous letter in January asking you to pay your bill, wasn't it?

A. Yes, sir.

Q. And you didn't pay it, did you?

A. I don't recall when we paid it, sir.

Q. Let me show you this from your files, an authorization for payment.

A. All right, sir.

Q. And this is on adjusted figures. I will come to that later, but first I want the date. When did you finally pay a part of this debt under adjustment?

A. April 18, '56.

Q. How long is that after the pictures played in September?

A. Six months from the completion of DESERT SANDS.

Q. Now, during that period of six months you requested first an adjustment on NOT AS A STRANGER, didn't you?

(1804)

A. On the renegotiated 12th week.

Q. Yes. I mean on the 12th week.

A. Right, sir.

Q. You wanted an adjustment of that?

A. Yes, sir.

Q. There is no doubt you asked for it, didn't you?

A. Right, sir.

Q. Didn't you testify, when Mr. Sawyer asked you on direct examination, as follows:

> Now, on the motion picture NOT AS A STRANGER did you ask for an adjustment on that picture?
>
> A. No, sir.

A. Not on the original contract, sir, of 11 weeks. We asked for it on the hold-over renegotiated deal.

Q. Mr. Sawyer didn't ask you what week you asked for. He said "Did you ask"—

A. You are right.

Q. —"for an adjustment on NOT AS A STRANGER?"

A. Right.

Q. That was an incorrect answer, wasn't it?

A. Yes, sir.

Q. Under oath?

A. Yes, sir.

(1805)

Q. Now, you not only asked for it but you held up your bill also for the next United Artists picture. These were the first two United Artists pictures you ever had any dealings for, right?

A. Yes, sir.

Q. And they finally offered you an adjusted amount and you refused it as not being enough, didn't you?

A. I don't recall that, sir.

Q. Do you not recall that the producer's representative of this picture, NOT AS A STRANGER, was a man by the name of Skip Weshner?

A. On NOT AS A STRANGER? I thought you told me it was Mr. George Schaeffer.

Q. I am incorrect and you are right. It was George Schaeffer on NOT AS A STRANGER and Skip Weshner on DESERT SANDS. I beg your pardon.

A. That's right.

Q. Now, don't you recall that Skip—that is the first name of Mr. Weshner, the representative of the producer—

A. Yes, sir.

Q. —was willing to reduce DESERT SANDS by 10 per cent for each of the weeks, in order to get a payment of the bill, but you stated that you would not accept that adjustment and you refused to pay? Do you recall that?

(1806)

A. No, sir, I do not.

Q. I show you this document and ask you if it refreshes your recollection. This isn't sent by you but I ask you if it refreshes your recollection about that.

When you finish reading it I will put the question directly to you. Perhaps it will be clearer.

A. I wouldn't know what Mr. Tunick wrote to Mr. Milt Cohen.

Q. I am asking you whether that doesn't bring back to you the fact, that memorandum of a report, doesn't it bring back the fact to you—I don't say you saw that letter—

A. I should say I didn't.

Q. —doesn't it bring back the fact that you were offered a 10 per cent adjustment and you flatly refused to take it as not enough?

A. We took it, sir.

Q. What

A. We took the 10 per cent adjustment.

Q. No, this was only for one week and you wanted it for the second week, too. Do you recall that now?

A. No, sir, I do not. This is the first time—

Q. Did you finally get an adjustment for the second week as well as the first?

A. On DESERT SANDS?

(1807)

Q. On DESERT SANDS.

A. Yes, sir.

Q. And so far as that letter goes, doesn't it indicate to you that they offered you first for one picture, one week of DESERT SANDS, and you refused it?

A. What Mr. Tunick said to his superior, sir, doesn't concern me. I don't know what he said. He tells here further, he says you got involved in it.

• • •

Q. I ask you whether the figures in that letter remind you of the fact that they offered you 10 per cent for a one-week adjustment and you refused unless you got it for two weeks. That is my question.

A. We took the final adjustment offered us, sir. I know nothing about this letter from Mr. Tunick.

• • •

(1809)

Q. Let me show you this letter of a report from Mr. Tunick to his home office. I don't say you ever saw it, but I ask you if it refreshes your recollection that you flatly refused to pay this unless you got the adjustment you wanted.

A. I don't know anything about it.

Q. You finally got an adjustment on NOT AS A STRANGER by wiping out the entire 12th week film rental of $1,040-odd, except that you took over the advertising expense of some $300-odd, I think it was, right?

A. I don't know about the amount, but that was the deal.

Q. And you finally got an adjustment on DESERT SANDS, which constituted one third of the amount of the film rental; in other words, it was $2600 film rental and you got a $986 adjustment on that, right?

A. No, sir. The film rental was $3500 and something, you told me, and we paid $2600.

(1810)

Q. And you got $986 off?

A. Yes, sir.

Q. So that would be roughly how much of the total?

A. A little less than a fourth.

Q. I beg your pardon? Thirty-five and a thousand off. Well, roughly about 30 per cent off, right?

A. Yes, sir.

Q. So when you testified that you never asked for an adjustment on NOT AS A STRANGER—I have asked you that—that was incorrect?

A. Yes, sir.

Q. And also you paid this bill six months after your play date with the adjustment off, right?

A. Yes, sir.

Q. Incidentally, on NOT AS A STRANGER you have told us that you made a very substantial profit on this picture but you still got the adjustment for that 12th week?

A. Yes, sir.

Q. Now, did you ask for an adjustment on WIZARD OF OZ, of Loew's?

A. Yes, sir.

Q. What was the gross of that picture? Look at your record, please.

A. $8,907.

(1811)

Q. So at a 40 per cent percentage you owed $3,562.80?

A. I would assume that is right.

Q. And Loew's told you, did it not, that it didn't want to adjust that picture because they had not sold first runs for less than 40 per cent? They told you that, didn't they?

A. Yes, sir.

Q. But nevertheless you didn't pay that bill until you got an adjustment, is that right?

A. That's right, sir.

Q. And you finally got an adjustment from the contract obligation of about $1,336, right?

A. 15 per cent.

Q. Now Universal. We will come to the details of that later, but at one point there was no doubt that when you refused to pay your bill there they offered you a $15,000 adjustment on the amount, is that right?

A. At one point.

Q. Yes, that's right. That is correct, isn't it?

A. At one point it is correct.

Q. And you refused to take it at that point?

A. Yes, sir.

Q. Do you know from the records of the company that the first picture that was to open this theatre was JULIUS CAESAR, another Loew's picture?

(1812)

A. I have heard of it, yes, sir.

Q. Isn't it a fact that the theatre wasn't ready to open on the date that JULIUS CAESAR was booked in for?

A. As I remember it, sir, JULIUS CAESAR's contract was never signed.

Q. Are you sure of that?

A. As I remember it, sir.

Q. What was the guarantee on JULIUS CAESAR?

A. I believe it was $30,000.

• • •

Q. Was there a commitment with Loew's for the playing of JULIUS CAESAR for the opening date, with a minimum guarantee of $30,000?

A. I wouldn't know, sir, whether there was a commitment. I know the contract wasn't signed. At least I was told it wasn't.

(1813)

Q. I didn't ask you about a formal contract. I asked you whether you know and have ever stated that there was a commitment for that picture for $30,000 minimum guarantee to Loew's.

A. What do you mean by "commitment"?

Q. A binding commitment, a binding arrangement with Loew's to supply that picture.

A. That I do not know, sir

Q. You do not know. Well, now, let's see if we can sum up this situation to save time. There were 32 programs of all the defendant-distributors' pictures during the period of this suit, is that right?

A. Yes, sir.

Q. And of those 32 programs contracts were changed in your favor on 11, is that right?

A. Well, I haven't totaled it. I assume if you say it is 11 it is 11.

Q. Yes. If you want to I will even run through them again, but I don't think it is necessary. You can check it.

And I am assuming for this purpose, Mr. Wren, to be fair to you, when I say 11, that I am not limiting myself to adjustments on film rental but I am taking your definition that pulling-out time, less time on the contract, no matter how it is arranged, is also an adjustment. I am

(1814)

including that in it, Mr. Wren, so that my question will be clear. Do you understand that?

A. You mean either playing time or reduction in terms is an adjustment?

Q. On your definition, and that is how I am doing it. Is that all right?

A. Yes, sir.

Q. And there are 11 of those out of the 32.

Yesterday, incidentally, coming back to Universal for just one question, you testified at one point that you never testified in the Universal suit. That is the suit which Universal brought against the Viking to collect the money that it claimed was due it. You said you never testified in that suit yesterday.

A. In the courtroom, no, sir.

Q. Isn't it a fact that you were sworn in and took the stand?

A. That is all, just sworn in.

Q. Well, you were there a very brief time.

A. That's right.

Q. But you testified in the litigation, you were sworn in and took the stand, weren't you?

A. Yes, sir, but I don't think I gave any more than my name and address.

(1815)

Q. I have here the printed record of that case. Incidentally, that case was tried and then Viking Theatre lost, it had to pay the money after it appealed?

A. Yes, sir.

Q. Now, I show you the printed record, if it will help you, and if you still then don't know I am not going to waste too much time on it. Isn't it a fact that at page 72a and then look at 76a, you were asked some question, not many, but you were asked various questions, 72 and 76? Look at both.

• • •

(1816)

A. I was asked four questions.

Q. How many?

A. Four here.

Q. And look at 76. I am not asking you to count them. You did testify in that case, is my question, didn't you, besides your name and address?

Mr. Wren, is this so difficult? You did testify that case?

A. Six questions, yes, sir.

Q. So when you testified at page 1683 yesterday:

Q. Did you testify in the Universal suit when Universal sued you for the film rental? Do you remember that suit?

A. I never testified in that suit, sir, except in depositions.

That was incorrect, wasn't it?

A. Yes, sir. I was asked six questions. I am sorry, sir.

Q. Now, when you pull a picture at a theatre, the percentage of the film rental to gross is higher than if the picture hadn't been pulled, is that correct, sir, mathematically?

A. I would like to have you repeat the question, please.

Q. Yes, but I think you are pretty good at mathematics. See if we can cut through this.

(1817)

When you pull a picture so that it doesn't play let's say the eighth week or the ninth or tenth week, the result of that pulling of the picture is that the percentage of film rental to gross is higher as a result of the pulling than if it had played more weeks, isn't that so?

A. I can't agree with that, sir. How would you—

Q. Well, let's see. If the eighth and ninth week, let's assume it is weaker at that point, it only does let's say $5,000, let's take that illustration.

A. Right, sir.

Q. And your house expense is $4,970.19. Then so far as the distributor is concerned there is practically no film rental there?

A. Right, sir.

Q. For that week, right?

A. Right, sir.

Q. Therefore, you have had more income and you have paid no film rental for that week. Nothing wrong with that, I am just saying that is the way it works out, right?

A. On that type of deal, yes, sir.

(1818)

Q. Therefore, if you had played it more weeks, you would have a higher film rental and the distributor would have had the same—withdrawn.

If you would have played it an extra two weeks, you would have had a higher gross at your theatre but the film rental would be the same because you didn't pay on the last weeks on this assumption?

A. Right, sir.

Q. Therefore, when you don't play it the 8th or 9th week the percentage of the film rental to the gross is higher, right?

A. Yes, sir.

Q. Now, you have testified, at Mr. Sawyer's behest, concerning national film rentals and your grosses, and I want to show you from your own testimony some of these and ask you some questions about it. That is what I am addressing myself to.

DESERT SANDS is a United Artist picture, national film rental $481,000. You can check me. I am assuming that you are doing that. WIZARD OF OZ, national film rental $448,000.

There we have an instance where by hindsight the two pictures that you played had practically the identical national film rental, right?

(1819)

A. Yes, sir.

Q. Now, taking the first week always, that is the highest always of your theatre so I am taking that to be fair about it.

The first week's gross boxoffice receipts of the Viking—look at your figures and see if this is right—for the first picture $6,300 and for the other picture $8,900. So, although the national film rentals are virtually the same, you did on this amount, well, almost $2600 more than on the other, right?

Don't shake your head. You have got to answer.

A. Yes, sir.

Q. Let's take another comparison. LUCY GALLANT, $1,036,000, national film rental, as it turned out later.

BIG KNIFE, which you played, national film rental $662,000. That is much lower, isn't it?

A. Yes, sir.

Q. A little more than half, 60 per cent or so.

A. Yes, sir.

Q. Nevertheless, LUCY GALLANT at the first week at your boxoffice had $7800, correct?

A. Yes, sir.

Q. And how much did—look at your picture, how much did BIG KNIFE with the lower film rental, national film rental,

(1820)

have?

A. $14,760.

Q. So here is a case in which the picture that has only 60 per cent national film rental, almost half, let's say, for rough purposes, does twice as much as the picture that had the higher national film rental, right, correct?

A. Yes, sir.

Q. STUDENT PRINCE, $2,500,000 national film rental. You played that, and that is a very good national film rental, isn't it?

BETRAYED you played—both Metro pictures, both Loew's pictures—$1,900,000. In other words, this is lower by $600,000 national film rental.

A. Yes, sir.

Q. But what were the receipts of STUDENT PRINCE? Will you read them off, please?

A. $18,453 and $20,107.

Q. $18—

A. —453 was the first figure, and the second was $20,-107.

Q. $20—

A.—107.

Q. So the one that had the lesser national film rental, by later experience, of $600,000, did two thousand more at the

(1821)

boxoffice than the other one, correct?

A. Yes, sir.

Q. RED VELVET SWING, $1,117,000 national film rental. BIG KNIFE, only $662,000 film rental. That is almost double. Give me how you did at the boxoffice on those, please.

A. RED VELVET SWING, $14,823; BIG KNIFE, $14,760.

Q. So the picture that had half almost, in approximate terms, of the film rental did just as well as the picture that had double the national film rental, right?

A. Yes, sir.

Mr. Sawyer: Are these figures first week only?

Mr. Nizer: Yes.

By Mr. Nizer:

Q. As a matter of fact, I think the illustration would be, isn't this true mathematically, if I took not the first week, which is always the highest, but took the whole engagement, this would be enlarged, this point, wouldn't it (indicating)? I have taken the first weeks so as to get the highest figure.

A. Yes, sir.

Q. HIT THE DECK, $2,000,000 national film rental, BRIGADOON—those are both Loew's pictures, aren't they, Metro's pictures?

A. Yes, sir.

(1822)

Q. Also two million. Now, here we have for approximate purposes identical national film rentals. What was your first weeks?

A. BRIGADOON—I am sorry, HIT THE DECK, $15,559; BRIGADOON, $20,966.

Q. So you did about over $5,000 better on one week, $5,000 more one week?

A. Yes, sir.

Q. With one picture than the other, even though they had the same national film rental ultimately?

A. Yes, sir.

Q. I will give you only one more. DESERT SANDS, $481,000 national film rental. SECOND GREATEST SEX, $1,048,000. So that is more than twice. The second picture is more than twice the national film rental, isn't it?

A. Yes, sir.

Q. All right. Give me the figures on how you did at your boxoffice.

A. SECOND GREATEST SEX, $6,718.

Q. And the other one?

A. DESERT SANDS, $6,278.

Q. So there is virtually no difference; just $500 on $6000 between these two pictures, even though one picture has less than half the national film rental of the other; is that right?

(1823)

A. Yes, sir.

Q. Now, will you say, without my continuing these illustrations, that there are at least many, many illustrations in the playing of pictures at your theatre, and I suppose it

is true all over, Mr. Wren, that there is no direct relationship between what ultimately turns out to be the national film rental and the receipts at the theatre. Isn't that correct in many instances?

A. I don't think there could be a general pattern.

Q. Well, I am not saying it is a general pattern. I am saying in many instances, not only at your theatre but at any theatre.

A. That's right.

Q. It is true, is it not, that there is no relationship between the national film rental, which is hindsight, and what the picture does when it plays, correct, in many instances?

A. In some instances.

Q. Would you like me to continue to show you how many there are in your theatre or will you say in many?

A. I will say in many to shorten this.

Q. Yes, because there are many, sir. Thank you.

You testified, I believe, Mr. Wren, that it is the custom, you told us, you used the word "custom,"

(1824)

Mr. Sawyer asked you about that, it is the custom you said, and you were talking about the period of this lawsuit when you made these deals, for a distributor to pay all advertising on 90-10 deals. Do you recall that testimony, sir?

A. Yes, sir.

Q. And do you still say that it was the custom during the period of this lawsuit, let's say, in 1955, when you were buying these pictures—that is the period I am talking about—for the distributor to pay all the advertising on a 90-10 deal?

A. Or advertising in the same proportion, 90-10.

Q. I didn't hear that answer.

A. Or advertising in the same proportion as film rental, meaning 90-10; either all of the advertising or 90 per cent of the advertising.

Q. So you want to change your answer now to include a modification that it is either 100 per cent or 90 per cent?

A. Right, sir.

Q. And you want to change that, and that that is your present answer for whether it was a custom in 1955—custom?

A. Yes, sir.

Q. —for the distributor to do that?

A. Right, sir.

(1827)

Q. Now, my question. I will rephrase it; you may have forgotten the words.

You don't know of a single Loew's contract in Philadelphia, at or before the time of HIT THE DECK, in February, 1955, which had a 90-10 clause and in which the distributor paid 100 per cent of the advertising, do you?

A. Net contract, no, sir.

Q. Now, you knew the Shapiro brothers who operated the Arcadia Theatre, didn't you?

A. Yes, sir.

Q. You were very intimate with them?

A. Not necessarily, no sir.

Q. Did you meet frequently with them?

A. And the branch managers in town, certainly.

Q. What is that?

A. And a number of branch managers in town. We all used to meet in the Coach Room.

Q. Did you have frequent meetings with the Shapiro brothers, who operate the Arcadia Theatre, alone, without any managers or anyone else, frequently?

A. No, sir.

Q. Did you meet them for lunch regularly?

(1828)

A. No, sir.

Q. Did you have three or four lunches a week with them on various occasions?

A. With branch managers, yes.

Q. No. I am not asking you a word about branch managers.

A. You mean just alone, never.

Q. With—

A. Three and four times a week, definitely not, sir.

• • • •

(1829)

Q. Was Merton Shapiro very close to you socially?

A. Socially, no, sir, not any more than the lunches.

Q. Did you testify as follows in your deposition:

"Q. Now, let me ask you this: Were you at the time you were joining Mr. Sley friendly with the Shapiro brothers at the Arcadia?

"A. Yes, sir."

Did you make that answer?

A. Yes, sir.

Q. "Q. You were very friendly with them then?

"A. Yes, sir.

"Q. Socially?

"A. Yes, sir."

Did you make that answer?

A. Yes, sir.

• • •

(1830)

Mr. Nizer: Will you please read back, with His Honor's permission, my last question when he denied that he was friendly socially with these gentlemen. Will you please read that question back?

(The reporter read the record, as follows:)

"Q. Was Merton Shapiro very close to you socially?

"A. Socially, no, sir, not any more than the lunches."

By Mr. Nizer:

Q. And you testified:

"Q. You testified you were very friendly with them, the Shapiros?

"A. Yes, sir."

"Q. Socially?

"A. Yes, sir."

Didn't you so testify?

A. Yes, sir.

Q. And what is the distinction you are raising?

A. I never went anywhere in the evening with these boys.

(1831)

Q. I didn't ask you that. We are talking about your testimony.

Are you raising the distinction that you were socially friendly with them but not very close socially with them, the one Mr. Sawyer made; is that your contention?

A. Yes.

Q. Well, didn't you also testify as follows:

"Q. You knew that Merton Shapiro was very close with Formato?

"A. Merton Shapiro was very close to me socially."

Did you make that answeer?

A. Yes, sir.

Q. Do you want to take back the answer you made previously when I asked you that weren't you very close to him socially? Do you want to take it back, is my question.

A. No, sir.

Q. Well, the two are inconsistent, aren't they? You were either very close to the Shapiros socially or you weren't. Now, what is it?

A. We were close socially in midday.

Q. And does "very close socially" have to be only in the evenings, according to your definition of "social contact"?

A. Yes, sir.

(1832)

Q. I see. Well, if it was midday—First, let me ask you, did you ever have dinner with the Shapiros in the evening, not in the daytime?

A. Yes.

Q. Frequently?

A. Maybe two or three times a month.

Q. Did you have breakfast with the Shapiros?

A. Yes.

Q. So now you had breakfast, lunch and dinner?

A. Yes, sir.

Q. Let's see whether it is two or three times a month. I am referring to your expense vouchers.

A. Right, sir.

Q. February 12, 1955, lunch with Merton and Bennard Shapiro, right?

A. Yes, sir.

Q. March 31, M. Shapiro—it doesn't say what, it just says restaurant bill from Warwick, that is all it says, on your voucher.

A. Right, sir.

Q. April 3, 1955, lunch with M. and B. Shapiro?

A. Right, sir.

Q. April 18, 1955, lunch M. Shapiro?

A. Yes, sir.

(1832a)

Q. April 22, 1955, lunch B. Shapiro, J. Turner?

A. Right, sir.

(1833)

Q. April 30, Lunch with M. and B. Shapiro.

A. Yes, sir.

Q. April 4, 1955, lunch with M. Shapiro, re ALADDIN, in George Schaeffer's office.

A. Right, sir.

Q. You were there with him in a distributor's office?

A. No, sir, that was—

Q. Neil Agnew.

A. Neil Agnew and four or five of us met at the Coach Room. That is where I met Neil Agnew, at the Warwick Hotel.

Q. May 12, lunch with M. and B. Shapiro.

A. If it is on there, yes, sir.

Q. June 10, 1955, M. and B. Shapiro.

A. Yes, sir.

Q. June 6, 1955, lunch, M. and B. Shapiro.

A. Right, sir.

Q. August 10, lunch, M. Shapiro.

A. Yes, sir.

Q. August 18, lunch, M. Shapiro and L. Formato.

A. Right, sir.

Q. August 25, dinner with B. Shapiro.

A. Right, sir.

Q. August 31, breakfast with M. and B. Shapiro.

A. Right, sir.

(1834)

Q. These are the same Shapiros, the men who run the competing theater, the Arcadia, right?

A. Yes, sir.

Q. August 25, dinner with B. Shapiro.

A. Right.

Q. August 31, 1955, breakfast with Merton and Bennard Shapiro.

A. Right, sir.

Q. September 2, dinner with M. Shapiro.

A. Yes, sir, if it is there.

Q. September 6, lunch with Shapiro, do you agree?

A. Yes, sir.

Q. That is correct.

October 21, 1955, dinner with Bennard Shapiro.

A. Are you reading this from my expense account?

Q. Yes.

A. Then they are correct.

Q. Incidentally, before I finish another ten of these, there were occasions when it wasn't on your expense account, because they would pay occasionally, I assume?

A. Or one of the branch managers.

Q. I am talking about the Shapiros, because in nine out of ten instances you were meeting with them alone, weren't you?

A. No, sir, I was not.

• • •

(1835)

Q. Didn't you, when you picked up a check, and you put in your expense voucher, put in specifically whom you had lunch with? When you had lunch with Formato you added Formato, didn't you?

A. Yes, sir.

• • •

Q. Where it says June 6, 1955, lunch with M. and B. Shapiro, are you telling us that you left out some names?

A. I am telling you, sir, that at the Coach Room at the Warwick Hotel practically everyone, including Mr. Goldman's representatives and the film companies' representatives used to congregate there every day for lunch.

(1836)

Sometimes we would all be at one table, or different tables, but we all—we were elbow to elbok practically. Other times we put tables together. Sometimes there might be twelve or fourteen people at lunch, including branch managers and executives, such as Mr. Agnew, who were in town to sell pictures.

That was a meeting place for film people.

Q. Now my question is, when you sat with others and rubbed elbows with others you didn't put down on the slip just Bennard Shapiro or Merton Shapiro, did you?

A. Sometimes, yes, sir. Otherwise a lunch would cost you fifty or sixty dollars, sir.

Q. When you had a lunch with Shapiro and a branch manager was there you put in his name, I guess, didn't you?

A. That is right. The three of us might have been at one table and at another table there might have been twelve other people.

Q. Certainly. I am not asking you about other people who were—

A. But I am saying people in the film business.

Q. Of course, there must have been lots of them in the room.

A. Yes, sir.

Q. I am asking you whether your expense voucher, when it said breakfast, or lunch, or dinner with Merton Shapiro, doesn't

(1837)

mean that you were meeting with him alone.

A. No, sir, it does not. Those breakfast instances, yes.

Q. Did you also eat at the 1918 Chestnut Restaurant?

A. Yes, I certainly do.

Q. And when you put down on your voucher with Bennard and Merton Shapiro at 1918 Chestnut, did that mean that you were having others there too?

A. Occasionally, yes, sir.

Q. When you met with other branch managers you put in the voucher the branch manager's name?

A. Not always, no, sir. Sometimes a branch manager would sit with us and have nothing.

Q. Well, were there other occasions when you were eating with the Shapiros when they would lift up the check?

A. Certainly.

Q. So that those wouldn't be on this list?

A. Well, hardly, sir.

Q. So therefore in addition to those that I have been reading to you there were other occasions when you met with Bennard and Merton Shapiro, your competitors at the Arcadia Theatre?

A. That is right.

Q. September 1, 1956, refreshments, B. Shapiro.

A. Well, that could be—

Q. Does that item mean to you that you were with him and

(1838)

paid the check for him and you or that you may have been with someone else?

A. It may have been just Bennard and I. It may have been Bennard and I and some friends of Bennard's.

Q. But so far as your recollection is concerned your vouchers are correct, that when you put down the name of whose bill you paid that means that is the fellow you met with?

A. Yes, sir.

Q. September 17, dinner with Bennard Shapiro at the 1918. That means you took him to dinner at that restaurant?

A. Yes, sir.

Q. You don't recall anybody else being there on that occasion?

A. No, I don't, sir.

Q. December 29, 1956, refreshments, M. Shapiro, at Brooks and Brooks.

A. That is a soda shop across from the Viking Theatre, yes, sir.

Q. That means you met with him alone. You were meeting with him. You were meeting with him frequently.

A. Mr. Shapiro and his brother live right up the street from the Viking Theatre, sir, and oftentimes they would

pass and we would have coffee or a soda over at Brooks and Brooks on their way to the Arcadia Theatre.

Q. You told us before that you only met with the Shapiros maybe several times a month. This indicates to you that you

(1839)

met with them quite regularly, doesn't it?

A. Practically every day in the Coach Room I would see somebody in exhibition.

Q. I say, not see them, met with them, and paid for lunch, or dinner, or breakfast; that you met with them, didn't you?

A. Yes, sir.

Q. This indicates frequently, doesn't it?

A. Yes, sir.

Q. And you charged those meetings as a business expense to the Viking Theatre, didn't you?

A. As I did branch managers and other people, sir.

Q. As you did many other things? Answer my question: You charged your meetings with Merton and Bennard Shapiro—

A. Yes, sir.

Q. —to the Viking Theatre as an expense, didn't you?

A. I certainly did, sir.

Q. So it wasn't merely social, was it, it was a business enterprise of some kind?

A. It was not, sir.

Q. So you were putting in a false voucher to Viking.

A. No, sir, I was not putting in a false voucher. It was with the full knowledge of Mr. Sley.

Q. Well, if it wasn't—Mr. Wren, if it wasn't business you shouldn't have charged it to the Viking Theatre, should you?

(1840)

That is correct, isn't it?

A. No, sir. It was understood with Mr. Sley that if I took you to lunch I would put in a check for it.

Q. If you took me to lunch with respect to a case that he was involved in, but if I had that pleasure that you would take me to lunch on a pure social matter, you wouldn't charge that to the Viking, would you?

A. Well, I have, sir.

Q. So that this $4970.19, that is put down as an expense of your theater, includes social visits with people, that had nothing to do with business, right?

A. On a lot of occasions, yes, sir.

Q. And the distributor was having that amount deducted from his film rental each time a picture played there, correct?

(1841)

A. No, sir, not each time a picture played there. Pictures didn't play there on 90-10 deals with $4,970.19.

Q. Each time that the $4,970.19 was deducted from the motion picture company's receipts that included, according to you, pure social entertainment that you were charging to the Viking Theatre, and the distributor was paying for that, according to you, right?

A. Yes, sir, and sometimes the distributor was in the entertainment, his representatives.

Q. And I am asking about the occasions when he wasn't, you would still charge it to the Viking, because you had that understanding, you tell me, right?

A. Certainly, it is the same as if I took you to lunch.

Q. Now, when you met with the Shapiros there were many occasions, weren't there, when you discussed, not social matters, but business matters, right?

A. Certainly.

Q. You did that often, didn't you?

A. I would say practically every day at lunch all anybody discussed was business, in the Warwick.

Q. I am talking about the Shapiros, your competitors.

A. I am talking about the Shapiros as well as anybody else I met with in the Warwick or at 1918 Restaurant.

(1842)

Q. You discussed something more with the Shapiros than just general business conditions, didn't you?

A. No, sir, I did not.

Q. Are you sure of that?

A. Yes, sir, I am.

(Counsel confer.)

By Mr. Nizer:

Q. Now, did you ever discuss with the Shapiros the kind of terms that they had on their deals?

A. Yes.

Q. Pardon?

A. Yes, sir.

Q. And you knew that the Shapiros had made deals with the Loew Company in which they paid 100 per cent of advertising, didn't you?

A. From discussions with them, yes, sir.

Q. And you didn't know of any instance in which the Shapiros had shared the expense on its deals with Loew, did you?

A. Only since the case.

Q. I am talking about the time—

A. No, sir.

Q. —of 1955.

A. No, sir.

Q. So that the only information that you had concerning what

(1843)

was done on a 90-10 deal with the Loew Company at the time of 1955, and you stated there was a custom, was that the

custom was just the opposite, if you could call it a custom, the practice, at the only other theatre you knew the figures about, was just the opposite of what you said was the custom. Isn't that right?

A. No, sir, because Mr. Formato himself told me that that was a policy with them, as did Mr. John Turner of United Artists.

Q. In 1955?

A. Yes, sir.

Q. You tell me that Mr. Formato told you it was a custom for the distributor to do what, to share the expense?

A. To pay the advertising on a 90-10 deal.

The first deal I made a deal with him on was HIT THE DECK, and he told me that right in the Bellevue-Stratford Hotel.

Q. That is what I want to know. He told you what? Now, let us have your best recollection.

A. He told me at that time—I told him that there wouldn't be any 50-50 over house budgets on any 90-10 deals.

And he said: I don't blame you, that is the way it will be, and that is the way it is.

Q. Now, what I am asking about is, did he tell you it was

(1844)

a custom for the distributor to share the expense with the theatre. Did he tell you that?

A. He did, at a later date, in Mr. Formato's presence.

Q. No, I am not asking you about that, but let's be clear about this. In 1955, when you were dealing with Formato, Formato told you it was the custom in the industry for the distributor to share the expense with the exhibitor in the 90-10 deal. Is that what you are testifying to?

A. To share the expenses, to share—

Q. Advertising.

A. Yes, sir, to pay the advertising. Not to share it. To pay on the advertising, on a 90-10 deal.

Q. Who was to pay it, the distributor?

A. The distributor, yes, sir.

Q. When did he tell you this, what date, approximately? You don't have to give me the exact date.

A. Well, as far back as the days when I was with Paramount he used to tell me those things, and on this deal—

Q. Now, wait a minute—

A. HIT THE DECK—

Q. Slowly, Mr. Wren. I will ask you about HIT THE DECK. As far back as when you were with Paramount, what year would that be?

A. From 1952 to 1955.

(1845)

hadn't you so testified?

A. I don't recall that, sir. If I did, it was in error, because we discussed this before I joined Mr. Sley.

Q. So I read the answer to you from page 521:

I had never heard of a 90-10 deal with a 50-50 advertising over a house budget.

This refers to your conversation—

A. I think there I meant generally, sir.

Q. You meant generally?

A. Certainly.

Q. When you say "never" you meant generally: I never heard of it. And you meant generally?

A. Well, fortunately, I have friends in New York who have 90-10 deals, never paid any advertising. And that is what I meant. I had never heard of it until I discussed the Viking.

Q. That is incorrect testimony, isn't it, according to your last testimony?

Mr. Sawyer: What page, sir?

Mr. Nizer: 521. 522.

By Mr. Nizer:

Q. That was incorrect, wasn't it? I think you said, if I said that, that was a mistake.

A. I say it was in error.

• • •

(1847)

Mr. Sawyer: Yes, would you read, please, Mr. Nizer, from the last question at the bottom of page 520 over to "words to that effect" on page 522.

Mr. Nizer: I was going to do more than that, but I will do what you say:

Q. And at that meeting did you discuss with him his prior operation at the Viking?

A. Oh, yes, sir.

Mr. Sawyer: "He" being whom? Will you make that clear, Mr. Nizer?

Mr. Nizer: Mr. Sley.

A. Oh, yes, sir.

Q. Well, how long was this second meeting in December, would you say?

A. Maybe two or three hours.

Q. And—

(1848)

A. Could have been longer. We may have gone to lunch.

Q. And was it fixed at that meeting as to when you would start?

A. Subject to my giving Paramount all of the notice that they needed.

Q. Now, did he show you or discuss with you the previous film deals—

A. That is right.

Q. —and he had made at the Viking?

A. We discussed film deals.

Q. And you saw the deals he had made?

A. That is right.

Q. Did you comment to him regarding those deals as to whether in your opinion they could have been improved upon or—

A. I did. I thought the film rental was outlandish and I thought the advertising deals were outlandish.

Q. And you told him so?

A. I had never heard of a 90-10 deal with a 50-50 advertising over a house budget.

Q. And you knew that those were the deals which had been made by your friend Formato with him; correct?

(1849)

A. Yes, sir.

Q. Did you tell him that you thought Formato had taken him?

A. Words to that effect.

Q. And did you ascribe that—

Mr. Sawyer: Thank you. That is fine.

Mr. Nizer: Is that all you want?

Mr. Sawyer: Yes.

By Mr. Nizer:

Q. Mr. Formato, that you are talking about here, that you complained about to Mr. Sley, is he the man who recommended you for this job with Mr. Sley?

A. Yes, among others.

Q. Is he the man who recommended an attorney to you to draw up a contract of three years with three-year options, Mr. Formato, your friend?

A. Yes, sir.

Q. You had known him very closely for many years?

A. Since 1952.

Q. And it was he who went to Sley and said, I think Wren would be a good man for you?

A. He went to Mr. Sley about Mr. Wren, and Mr. Hirth, Mr. Paul Clyman and other people.

Q. But he recommended you?

(1849a)

A. He recommended the other people.

Q. Please answer the question. Did he recommend you? that is the question.

A. Yes.

(1850)

Q. And you are now telling us—withdrawn.

The first picture that you made when you got into office at that theatre was a Loew's picture, wasn't it, a Metro picture, Mr. Formato's company?

A. First deal, yes, sir.

Q. And without a guarantee, a Metro picture?

A. Yes, sir.

Q. He was cooperating and being friendly with you, wasn't he?

A. He was selling Metro pictures and I was buying Metro pictures.

Q. Was he being—yes, undoubtedly.

A. Mr. Formato was very friendly.

Q. And you played—he was very friendly?

A. Yes, sir.

Q. And the first eight pictures that you played at the Viking Theatre were all Metro pictures, weren't they?

A. The first eight pictures I played?

Q. Yes.

A. No, sir.

Q. How many of the first eight? Look at your list.

A. HIT THE DECK I played. This is since I joined. GLASS SLIPPER and the PRODIGAL, WIZARD OF OZ. Four pictures.

Q. Before that you looked at the list. I want to correct

(1851)

the date on that, going backwards. You found out that Formato had been cooperating with Mr. Sley on the whole first year, didn't he? Isn't that a rough statement of accuracy?

A. That is very rough.

Q. But it is accurate, isn't it?

A. It is a rough statement, sir.

Q. Well, didn't he give him Loew pictures the first year? How many pictures of Loew's did you play the first year of operation?

A. Ten pictures.

Q. And that covered how many weeks of the theatre's operation?

A. From July 2, 1954 until June 30, '55.

Q. So for a whole year Formato's company, Loew's, supplied Loew pictures and you made the deals, and before you Mr. Sley did, for the Viking Theatre, right?

A. That's right.

Q. And Loew's were an outstanding company; Loew's Metro product was an outstanding, desirable product, wasn't it?

A. They were about fourth ranking that year, '55,'54-'55.

Q. I won't agree with that but I will take your statement for this purpose.

The man who was your friend and who recommended you to Sley and who recommended the lawyer for you to draw the

(1852)

right kind of a contract, the moment you got in you told Sley that Formato was taking him, right? You turned right on him?

A. I certainly did, told him he was taking him.

Q. You certainly did.

A. He was taking him.

Q. Now let me ask you about this business of "I never heard of a 90-10 deal with a 50-50 advertising over a house budget."

That is still an incorrect statement at the top of page 522, isn't it?

A. I said that was an error, as you interpreted it, yes, sir.

Q. It was an error. And all the reading of the prior page and the next page doesn't wipe out that error, does it? Does it?

A. Do you mean what you just read?

Q. Yes.

A. No, sir. I didn't say it did.

Q. And these 90-10 deals, incidentally, were also being made by—withdrawn.

Now, when you operated the Nixon Theatre—did you at one time, were you in charge of the Nixon Theatre?

A. Yes, sir.

(1853)

Q. Where is that situated?

A. 52nd and Ludlow, I believe it is, in West Philadelphia.

Q. Did you ever while you were operating that theatre make a 90-10 deal in which the distributor paid 100 per cent of the advertising?

A. No, sir.

Q. Did you ever make such a deal at the Tower Theatre when you were operating there?

Mr. Sawyer: Objected to, Your Honor, on the grounds that we are not talking now about—that is not first run and it has no relevancy.

Secondly, if we get into operations—

Mr. Nizer: I am talking about custom, Your Honor.

Mr. Sawyer: —operations as to neighborhood theatres, the way pictures are licensed in key run or neighborhood run or subsequent run, we will be here forever, and it has no relevancy as to first run licensing, they are two entirely different questions.

Mr. Nizer: Excuse me. I am limiting myself, Your Honor, solely to this matter of custom. I am not going into those operations at those theatres. I am trying to show that there was no foundation for such a statement of custom, that every fact contradicts it from his whole

(1854)

experience.

The Court: Well, now, as applying to other theatres rather than first run, would that be relevant here to the question as to the custom of first-run theatres? As I understand from Mr. Sawyer, the custom or practice of first-run theatres is different from neighborhood theatres.

Mr. Nizer: I think there may be much to that, Your Honor. I thought to some extent that on this limited point of advertising expense, the 90-10 deal, there wouldn't be any real difference because the 90-10 deal is the kind of deal that could very well be for a second-run theatre, and I think he has testified it is the poor kind of deal. But it requires the transposition of a bridge, and I accept Your Honor's observation about the difference and will withdraw the question. I think there is impact in the proposition that it may be different in a second-run theatre.

By Mr. Nizer:

Q. Now, you know of no exhibitor first-run—I will limit myself to that, then, in accordance with His Honor's correct observation—who was paying 100 per cent advertising on a 90-10 deal, except perhaps by a rumor, but otherwise you have no such knowledge, have you?

A. Any exhibitor paying 100 per cent of the advertising?

Q. Withdrawn. You are quite right. I misspoke myself.

(1855)

You know of no other deal with an exhibitor where the distributor was paying 100 per cent of the advertising on a 90-10 deal, except perhaps by some rumor, but not otherwise?

A. That's right, sir.

Q. And your whole testimony on the basis of custom was based upon the possibility of a rumor to that effect, is that correct?

A. What was told me, yes, sir.

Q. Except for rumors you had no knowledge of this subject, is that right?

A. That's right.

Mr. Nizer: I now move, Your Honor, to strike out his testimony that there was a custom, since he has now conceded that this was based upon rumors and no other information or knowledge.

• • •

(1859)

The Court: Mr. Nizer, I will deny your motion. However, granting you leave to renew it in the event that Mr. Sawyer doesn't show any actual custom or any actual contracts of that nature.

• • •

(1863)

THIRTEENTH DAY

• • •

(1865)

JAY WREN—resumed.

CROSS-EXAMINATION (continued)

• • •

By Mr. Nizer:

Q. On direct examination, Mr. Wren, you stated a grievance about a picture called DESPERATE HOURS.

A. Yes, sir.

Q. Do you recall that?

A. Yes, sir.

Q. That is a Paramount picture?

A. Yes, sir.

Q. Now, in the entire history of this lawsuit from the moment it began until you testified on the stand for Mr. Sawyer you had never stated a grievance on this picture DESPERATE HOURS, right?

A. I don't recall, sir.

Q. Well, Interrogatory No. 1. You signed, personally signed and swore to answers to interrogatories, as they are called, which in simple language is information which under court direction each side is to give to the other.

A. Right, sir.

(1866)

Q. Do you recall you signed and swore to them?

A. Yes, sir.

Q. And you were asked about grievances, as to what pictures, and you never mentioned DESPERATE HOURS in that, did you?

A. I don't recall, sir. I would have to check it.

Mr. Sawyer: Mr. Nizer, will you tell me where DESPERATE HOURS was discussed.

Mr. Nizer: Page 913 of the minutes of this trial.

By Mr. Nizer:

Q. Well, I show you—this is your signature: I am executive vice president of the plaintiff, the Viking Theatre Corporation. And you signed this document of claims, did you not?

A. Yes, sir.

The plaintiff reserves the right to make any changes or supplements.

Q. And you never made them until you got on the stand and testified here, did you?

A. That is right. There are many pictures involved.

Q. You did file—

A. We did bid on DESPERATE HOURS, and there were many pictures involved and one could have escaped our attention.

Q. Months after you signed this document you filed an amended document of additional claims that you wanted to

(1867)

make, didn't you?

Do you recall that?

A. We probably did.

Q. And in that one you never mentioned DESPERATE HOURS, did you?

A. I don't recall, sir. I would have to see it.

Q. You were asked under oath in this document:

List every motion picture for which the Viking Theatre Corporation made a bid or offer, which bid or offer plaintiff contends should have been accepted in preference to all other bids.

And in the answer to that question you did not list DESPERATE HOURS. At page 5.

• • •

By Mr. Nizer:

Q. Well, let us see, Mr. Wren.

At this trial, page 914 of the record, Mr. Sawyer said:

Now I show you documents which have been marked P-159 and ask you what they are.

• • •

(1869)

Q. (continuing) You were testifying:

The first document is a Paramount Film Distributing Corporation request for offer dated 9/14/55, covering THE DESPERATE HOURS, available on or about 10/19/55, and the rider or the attachment gives the terms offered for THE DESPERATE HOURS by the Viking Theatre; namely, 90 per cent of the gross

(1870)

receipts in excess of $5000. Any overtime incurred is to be added to the basic expense of $5000 before computing the distributor's 90 per cent of the gross receipts over the aforementioned expenses.

Now you went on:

The distributor to pay all advertising including four painted billboards and fourteen 28 sheets, totaling $1344.75 for the first month, rental of painted billboards and 28 sheet boards to be prorated in the event that the picture is held for additional weeks. Distributor also to pay for lobby display pieces and valance not to exceed $450.

Question by Mr. Sawyer:

Is there a clause with respect to playing time?

A. An unlimited run. Termination of engagement to be mutually agreed upon.

Q. Was that bid withdrawn by the Viking Theatre?

A. No, sir.

You testified—

A. Yes, sir.

Q. —about all that about DESPERATE HOURS.

A. Yes, sir.

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(1871)

Q. Before I go to page 1328, tell me now, when you testified as I have just read, did you have a grievance against Paramount or didn't you?

A. I wanted to list the pictures, that I had bid on them. That was one of them, sir.

Q. That is all? Was that the sole purpose of that testimony, just to say that you put in a bid for that picture, not other grievances?

A. Yes. The other grievance is that the man that got the picture didn't bid. That is our grievance. The people are getting pictures in first-run Philadelphia without bidding.

Q. Well, let's see. Let's examine that. I don't think that is what you testified to.

Did you ever testify to that on direct examination, about DESPERATE HOURS?

A. I don't recall. I may have.

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(1874)

Q. A few days ago you testified about DESPERATE HOURS right in this courtroom at Mr. Sawyer's insistence and requested questions. I am asking you not about '55, when DESPERATE HOURS was bid for, but a few days ago.

Can you tell me whether you stated a grievance against DESPERATE HOURS?

A. I don't recall, sir.

Q. You don't recall?

A. I haven't read that.

No, sir, I do not.

Q. But you do recall all about DESPERATE HOURS in 1955? That is clear to your mind?

A. Yes, sir.

(1875)

Q. Did you or did you not on direct examination compare the national film rental of DESPARATE HOURS with any other picture that played at the Viking Theatre?

A. We probably did.

Q. Probably? I am not asking what you probably did, Mr. Wren.

A. I told you, sir, I do not recall. If it is there, we did.

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(1876)

Q. Let's examine this matter a little further, because you raised it at the trial for the first time. You submitted a bid for DESPERATE HOURS on September 20, 1955, is that correct?

A. If that is the date on the request for offer, yes, sir.

Q. And the availability date for DESPERATE HOURS, the date it was supposed to play, was October 19, 1955, is that correct?

A. If it is on the request for offer, yes, sir.

Mr. Sawyer: What was the date, please?

Mr. Nizer: October 19, 1955.

By Mr. Nizer:

Q. Now, a month before that availability of October 19, 1955, for DESPERATE HOURS you had been awarded

another picture of Paramount called LUCY GALLANT, hadn't you?

A. Yes, sir.

Q. And the availability of that other picture, LUCY GALLANT, of Paramount, was October 26, 1955?

A. Yes, sir.

Q. So now we have DESPERATE HOURS available October 19, 1955, and LUCY GALLANT, a picture that you had obtained an award on from Paramount not October 19 but October 26, 1955?

A. Yes, sir.

(1877)

Q. Just one week thereafter?

A. Yes, sir.

Q. And your playing time for LUCY GALLANT was how long?

A. Indefinite run.

Mr. Nizer: May I have 59, please?

By Mr. Nizer:

Q. I show you the contract and ask you if it wasn't for three weeks with a possible holdover.

A. You are right, sir.

Q. All right. So that it was a minimum of three weeks—

A. Right, sir.

Q. —that you were under contract to play LUCY GALLANT, beginning with October 26, 1955, right?

A. Right, sir.

Q. So your theatre was booked up. You had taken the picture and had a definite contract for LUCY GALLANT for three weeks beginning on or about let's say October 26, 1955?

A. Right, sir.

Q. Therefore, of course, having accepted that picture, LUCY GALLANT, you couldn't play at the same time DESPERATE HOURS, could you?

A. I think I also testified—

Q. Could you, sir?

A. —that LUCY—no, sir.

(1878)

Q. That is what I would like you to answer first.

A. But the facts—

Q. Do you want to make an explanation?

A. Yes, sir. The facts are that Mr. Ted O'Shea asked us to move up LUCY GALLANT to October 6.

Q. Well, you still couldn't play DESPERATE HOURS, could you?

A. Why not? On a three-week commitment?

Q. Well, if it is three weeks with a possible holdover with terms?

A. Yes, sir.

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(1879)

Q. When you were answering my questions before about the availability date, and so on, did you understand my questions?

A. Yes, sir, about the availability date I did.

Q. Now let's continue with my line so that I am not broken up with these interruptions.

You understand, since counsel wishes you to understand the rules of the court, that when I am through Mr.

(1880)

Sawyer may ask you anything he wishes about these matters, and if at any time anything I ask you isn't clear, will you please ask for a document or for anything. I am trying to be very fair with you. Don't you feel I have been?

A. To a degree, yes, sir.

Q. My question was, your bid for DESPERATE HOURS was to follow the BIG KNIFE, was it not?

A. Yes, sir.

Q. Now, if Paramount had acceded to your request for DESPERATE HOURS to follow the BIG KNIFE, your booking for DESPERATE HOURS would have made it impossible for you to play DESPERATE HOURS until for about six months, is that correct? Or do you want me to spell it out in dates for you?

A. I would like you to outline it for me, sir.

Q. I will.

Your BIG KNIFE bid was on November 9, '55, correct? Or do you want to see the documents each time?

A. I would like to see the BIG KNIFE bid.

Q. All right.

Mr. Nizer: May I have that? It is the bid of November 9th.

By Mr. Nizer:

Q. Until we get it, let's assume that date, that it was the November 9 bid, and it opened November 23.

(1881)

You have that schedule. That will help you. When did—

A. I don't have it here today, sir.

Mr. Nizer: Well, please give it to him.

A. I know it opened for Thanksgiving.

By Mr. Nizer:

Q. That's right. November 23rd, to be exact. Is that right?

A. All right.

Q. That will help you. You will have the date in front of you.

A. Right, sir.

Q. So that the BIG KNIFE played for four weeks, to December 21, 1955, is that right?

Look at your own schedule.

Mr. Sawyer: Now, Your Honor, I object and I renew my objection on this basis. The cross-examination seeks to impeach the witness as to matters which he did not state. That is my point, Your Honor. He did not state in his direct examination that the bid of the Viking on DESPERATE HOURS should have been accepted by the distributor. If he did not so state what is the point of demonstrating why the distributor was right in not accepting it, which is the only thrust of this examination, i.e., that he couldn't have played it

(1882)

for many, many months?

Mr. Nizer: Well, will you withdraw—

Mr. Sawyer: That is what I object to, Your Honor, because it seems to me in all fairness that is setting up a strawman and then knocking it down.

The witness did not state this, and Mr. Nizer has as yet to point out in his direct where he did. So, if there is no complaint that in this instance—every item we put in, Your Honor, was not necessarily in each case—most of them, yes—was not to prove in each case that the bids should have been accepted, but as part of the case showing all the bids that we made. We felt that was incumbent upon us. There was nowhere not one scintilla of statement by Mr. Wren in his direct examination to the effect or even suggestion or inference here that this bid should have been accepted. Now, if that be so, I submit, Your Honor, that it isn't proper to cross-examine the witness to demonstrate that the distributor was right in not accepting it, since

we don't say he was wrong in this instance. That is my objection.

The Court: Yes, but why did you put in the bid, and so on? Why did you put in the bid?

Mr. Sawyer: Well, shall I tell Your Honor why? We had a perfectly good reason for putting it in. For one thing, it seemed to us we should put in all bids that we made.

(1883)

Secondly, there will be disclosed later, Your Honor, —you see, I asked him this question for a reason. I asked him the question, "Was your bid withdrawn?" That was the point of that, "Was your bid withdrawn?"

And he answered, "It was not."

Now, at a future appropriate time we will through a witness employed by the defendants, we will have—and it is one of the documents that has been marked for identification—a transmittal form. That is the form that goes from a branch office to the New York office. On the transmittal form it says that the Viking offer was withdrawn. That is the entire point of the DESPERATE HOURS. That is the sole point of DESPERATE HOURS.

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(1886)

Mr. Sawyer: I will tell you why I made that comparison, Your Honor. I made this comparison for two reasons.

For one thing, when I went through this comparison I demonstrated in each case, in so far as I was able to possibly reconstruct, I demonstrated in each case the film rental of the picture we played and the film rental of the

(1887)

picture that we didn't get, that we bid on.

Now, in some cases there were one or two where the film rental of the picture we played, for instance, was higher than the other one, and I put those in, too. I had two reasons. One is that I must have on the record—you have to get it in at some point—there must be on the record the film rental of all of the pictures we played, and there must be on record the film rental of all the pictures we bid on, because to do otherwise —whether a particular picture should have been awarded to us or not—because to do otherwise would be less than candid on my part, and the defendants would be the first to object.

Therefore, I did it for all films. If I missed one, it was inadvertence. I believe I did it for every single film, that is, every film on which we bid. And every film that we actually showed, the film rentals went into the evidence.

Now, that is to give a complete picture. You do not necessarily draw from this—and I don't think you can, particularly when the witness has previously testified and makes no such assertion—that we make the assertion that DESPERATE HOURS on our bid should have been awarded to us in preference to the person to whom it was awarded.

Now, subsequently DESPERATE HOURS will come in

(1888)

in a different context, as Mr. Wren has already said from the stand, because in a sense we have a generalized grievance about procedures in that we claim that on this as on many other pictures one of our competitors didn't bid at all, but that doesn't come into the case now, and that is not a grievance, as to whether we should have played DESPERATE HOURS. That is a grievance on generalized procedures.

• • •

(1889)

By Mr. Nizer:

Q. Perhaps you have had a chance to look at your schedule during this and without my spelling it out for you, unless you want me to, isn't it a fact that your bid to play, after the BIG KNIFE to play DESPERATE HOURS after another picture called the BIG KNIFE meant that according to your schedule you couldn't have played DESPERATE HOURS for about six months?

A. That is not right, sir.

Q. Let's see if it isn't.

A. All right, sir.

Q. The BIG KNIFE opened November, 1955?

A. Right, sir.

Q. It was to play four weeks?

A. Right, sir.

Q. That would take it to December 21, 1955. Look at your schedule.

A. Yes, sir.

Q. Now, at that time you had already made a contract to put in Universal's SECOND GREATEST SEX, right?

A. Right, sir.

Q. And that was to be followed by ALL THAT HEAVEN ALLOWS?

A. No, sir.

Q. By what picture?

A. SECOND GREATEST SEX, as I have said, was originally

(1890)

Thanksgiving and they moved it back to Christmas; indefinite run.

Q. And what was to follow it is my question.

A. Nothing.

Q. Didn't you have this ALWAYS TOMORROW and ALL THAT HEAVEN ALLOWS and didn't you have for March NEVER SAY GOODBYE? Just look at it.

A. Yes, I am looking at it but the contracts covering these Universal pictures are indefinite runs; they don't specify any opening dates in any of those contracts.

Q. In other words, if one picture runs longer a few weeks, it is more. I am taking the least. When did you actually play it, let's look at the actuality. You were tied up with those pictures to March 1.

A. No, I was not, sir. That is what I am trying to point out, sir. The contracts—may I see the contracts on Universal's SECOND GREATEST SEX?

Q. You may see it. Answer my question in the meantime.

A. I was not tied up, sir.

Mr. Sawyer: I thought we understood pursuant to Your Honor's ruling that if the witness asked to see a document that he might see it. Now he asks and Mr. Nizer won't indulge him while we get it.

If you please, the witness asked for it and

(1891)

we would like to show it to him.

The Court: Let's show him the contract. Can we do that right away?

Mr. Sawyer: Yes, sir, right away.

(Document is handed to the witness.)

By Mr. Nizer:

Q. Now, looking at that contract, answer my question, when did you actually play the four Universal pictures, THE SECOND GREATEST SEX, ALL THAT HEAVEN ALLOWS, THERE IS ALWAYS TOMORROW, and NEVER SAY GOODBYE? Give me the dates from your schedule. Please do that first.

A. All right, sir. SECOND GREATEST SEX 12-23 to 1-13.

Q. Yes?

A. ALL THAT HEAVEN ALLOWS 13 to 2-14.

Q. Just hold that a second. So that ALL THAT HEAVEN ALLOWS did follow THE SECOND GREATEST SEX immediately, didn't it?

A. Yes, sir.

Q. All right. I thought you told me before it did not. What is the next? Go ahead.

A. Did I say it did not? I didn't say that.

Q. I thought you did.

A. I did not say that.

Mr. Sawyer: No, he did not say that.

The Witness: NEVER SAY GOODBYE followed that.

(1892)

By Mr. Nizer:

Q. You played it right immediately after?

A. THERE IS ALWAYS TOMORROW and NEVER SAY GOODBYE.

Now, what I also said, sir—

Q. Mr. Wren, I will give you every opportunity to explain it.

A. I would appreciate that, sir.

Q. Let me first get some facts on the record.

A. Right, sir.

Q. What was the last date that you played these four Universal pictures?

A. 3-23-56.

Q. Holding your explanation for a minute, I will come back and give you a chance.

A. Right, sir.

Q. So that from THE BIG KNIFE, on November 23, 1953, that was at Thanksgiving you correctly said?

A. Yes.

Q. Right down to March, 1956, you were playing these pictures which you had contracts for at the time that you bid for DESPERATE HOURS, didn't you?

A. I have the contracts. May I read them, sir?

Q. No. I am not asking you to read the contract. First answer my question.

A. Yes, I had contracts for those pictures; yes, sir.

(1893)

Q. Just a moment. And what you want to explain to me, and I will let you do it in your own way, and I think I anticipate maybe we can save ten minutes, what you are trying to explain to me is that at the time that the contract was made you didn't know when the beginning date of that picture would begin. Is that what you are trying to tell me?

A. No, sir.

Q. You tell me.

A. Each and every one of these Universal contracts, Universal made out indefinite run, no opening date. Each and every one of them, sir. SECOND GREATEST SEX, indefinite run.

May I have the rest of those contracts, please? This is all SECOND GREATEST SEX.

(Documents are handed to the witness.)

The Witness: There is no opening date in that contract, sir.

ALL THAT HEAVEN ALLOWS, indefinite run, the guarantee and no opening date, sir.

NEVER SAY GOODBYE, indefinite run, no opening date.

THERE IS ALWAYS TOMORROW, indefinite run, and no opening date, sir, in any of these contracts.

By Mr. Nizer:

Q. Were those pictures without a definite opening date scheduled for January, February and March?

(1894)

A. Yes, sir.

Q. So that your whole point comes down to the fact though it was to open in January and the next one in February and the next one in March, you didn't have a precise date. It didn't say January 18, it might have been the 20th.

A. It didn't say January, sir.

Q. Were they to open, were you permitted to open those pictures January, February and March of 1956?

A. There is what I was committed for, right there, indefinite run, sir.

Q. Please answer my question. You can say yes or no or anything else.

A. I was not committed by contract to open those pictures at any time.

Q. At any time?

A. No, sir. There is nothing in the contracts telling me when I am to open those pictures.

Q. Listen to my question carefully, sir.

A. Right, sir.

Q. Were you committed to open those Universal pictures with Universal in January, February and March, 1956?

A. No, sir. Not by contract, I was not.

Q. Did you testify in a deposition in the Universal case?

A. Yes, sir, I did, sir.

(1895)

Q. In which Universal sued you for the film rental?

A. Yes, sir.

Q. "Q. You could still have gotten that—"

Mr. Sawyer: What page, please?

Mr. Nizer: 185.

"That was Christmas week."

"A. May I explain?"

You were trying to explain there, too.

A. Yes, sir.

"I still could not have gotten them."

"Q. These other pictures were scheduled for January, February and March, tentatively."

A. Tentatively.

Q. Let me quote your answer.

A. Right, sir.

"A. Yes. This is in January already and ALL THAT HEAVEN ALLOWS is scheduled to open next."

This is your answer:

"A. You have four pictures advertising in the lobby and most of these pictures that you bid on are four or five or six weeks hence. You bid today for a picture that might be available eight weeks from now."

Did you make that answer to that question?

A. If it is in there, I did, sir.

Q. And when you said, in answer to the question whether

(1896)

these pictures were scheduled for January, February and March tentatively, and you said, "Yes," and you went on with what I read, did you understand that under that contract, which didn't give a specific date, that there was a tentative commitment with Universal to play them January and February and March? Did you so understand it when you made this answer?

A. I understood other things when I made that answer, sir.

Q. Did you understand that among other things, which I am not asking about?

A. I do not care to answer that, sir, until I answer other things that you referred to.

Q. No, please, Mr. Wren, I am going to take you over the Universal matter, if you are anxious to talk about it. I assure you I will be there.

A. Good.

Q. Will you please stick to this.

A. Yes, sir.

Q. Did you have a tentative arrangement, let's call it that, with Universal to play January, February and March?

A. And Thanksgiving.

Q. And Thanksgiving?

A. Yes, sir.

Q. So that your three weeks of playing time—withdrawn.

(1897)

So that your offer to play DESPERATE HOURS after BIG KNIFE would postpone you up to December, 1955, to say the least, the BIG KNIFE playing until then, whereas you were obligated under that DESPERATE HOURS bid to open October 26.

A. And I could have. No, I wasn't. Under the DESPERATE HOURS bid I was scheduled to open after the BIG KNIFE, to follow the BIG KNIFE.

Q. No, no. I am asking for the availability date that Paramount gave you, not what you gave Paramount. That availability date was October 26, 1955. Now, please answer my question directly.

A. Yes, sir, but—

Q. But what?

A. But I told them I could not open it then. I would follow the BIG KNIFE with it.

Q. That's right. So you didn't accept Paramount's availability date. You said, "I can't meet your date. I have to make a date that is all the way down in December;" right?

A. I didn't say anything.

Q. Even if you leave out Universal.

A. I said to follow the BIG KNIFE.

Q. And that meant, as it turned out, December, right?

A. As it turned out, yes, sir. But I didn't specify—

(1898)

Q. In any event, you knew definitely, whether it turned out that way or not, you knew at the time when you were putting in your bid that you were not meeting the terms of the Paramount date of availability of October 29, didn't you?

A. I so indicated, sir.

Mr. Sawyer: Objected to, sir.

By Mr. Nizer:

Q. You so indicated?

A. Yes.

• • •

Q. And so I say, at the time that you put in your bid for DESPERATE HOURS, having accepted LUCY GALLANT and having put in your bid to follow the BIG KNIFE, it was absolutely impossible at the time you put in your bid to meet the Paramount date of October 29, 1955. That's correct, isn't it?

(1899)

A. The Paramount date, sir was 10-19-1955.

Q. October, yes.

A. October, yes, sir.

Q. It was impossible. Now, in the case of DESPERATE HOURS the bid, yours and others, were rejected, weren't they?

A. Yes, sir.

Q. By Paramount. Did you know that others had put in bids meeting the date of October 19?

A. Not until this case, sir; no, sir.

Q. Did you know that others had bid at all until this case began?

A. No, sir.

Q. Now, that isn't true, is it, Mr. Wren? Diddn't you receive as early as September, 1955—

A. The rejection notice. You are right, sir. You are right.

Q. And not only did you get the rejection notice in writing but it was addressed to all the people who had bid and it gave the names of all the people who had bid?

A. Right, sir.

Q. And were you invited after those bids were rejected to negotiate again with Paramount for DESPERATE HOURS, having a second opportunity, now, not to bid, but just to negotiate with them?

A. I don't believe so, sir.

(1900)

Q. "Therefore, we will negotiate further with each of you. Kind regards, Paramount."

Does that remind you that they did give you a chance to negotiate a second time?

A. Did they negotiate with me, sir?

Q. No.

A. Just because it says, "Therefore, we will negotiate further with each of you"—

Q. My question was, Mr. Wren, did they invite you to negotiate after the bids were rejected.

A. Not to my knowledge, no sir.

Mr. Nizer: I offer this letter in evidence, sir.

(Letter from Paramount Film Distributing Corporation dated September 27, 1955, signed by Ulrik F. Smith, to "Gentlemen:" was marked Exhibit D-19 for identification.)

Mr. Nizer: Your Honor, may I read this, please, to the jury?

Ladies and gentlemen, this is a paramount Film Distributing letter sent by the Branch Manager Ulrik

Smith and it is addressed, September 27, 1955, and it is addressed:

Gentlemen:

This is to advise you that we have received on the motion picture the DESPERATE HOURS, as offered in our letter of September 14, 1955, offers from the following: Stanley Theatre, Philadelphia; Mastbaum Theatre, Phila-

(1901)

delphia; Trans-Lux Theatre, Philadelphia; Viking Theatre, Philadelphia. We do not regard said offers as satisfactory. Therefore, we will negotiate further with each of you.

Kind Regards,

Very truly yours,

Ulrik Smith

By Mr. Nizer:

Q. Now, before you said you didn't know that there had been bids by other theatres. It is clear now that in this rejection which was sent equally to all, apparently—

A. Right, sir.

Q. —that you knew that the Stanley Warner Theatre, the Stanley, and the Mastbaum had put in bids, right?

A. Yes. When I received that letter, yes, sir.

Q. And also that the Trans-Lux Theatre, which doesn't belong either to Goldman or Stanley Warner, had put in a bid?

A. Yes, sir.

Q. And, of course, yourself?

A. Right, sir.

• • •

(1902)

Q. When you received this letter from Paramount, "Therefore, we will negotiate further with each of you,"

and that is addressed also to you, did that mean to you that now that the bids were rejected no more bids were necessary but they would negotiate with each of you to see if they could come to terms?

A. And I told you I don't recall that they tried to negotiate with me.

Q. Do you recall that you tried to negotiate with them?

A. It says, "we," sir. It doesn't tell me to come over.

(1903)

It says, "We will negotiate with you," sir.

Q. You consider it that when a company like Paramount, or any other company, tells you, "We will negotiate with you," that the burden is upon them to come to your theatre and say, "Now, let's do it." You don't think that your obligation, if you are interested in the picture, is to go to the branch office and say, "How about this picture?" Is that what you are telling us now? They have got to come to you?

A. Yes, sir, because they have said that they go to other people's offices and ask them.

Q. Have they ever come to your office?

A. No, sir.

Q. You never had a branch manager or a salesman visit you at your theatre?

A. Paramount?

Q. Any company—

A. Yes, sir.

Q. —for the moment?

A. Yes, sir, I certainly have.

Q. Have you gone to the Paramount or other office to try to buy pictures?

A. Yes, sir.

Q. There are a series of offices on Vine Street. Is it called film row, is that it?

(1904)

A. No, it is not, it is called Vine Street.

Q. Vine Street?

A. That's right.

Q. But it is a place where—

A. That is where they all are, yes, sir; and the Coach Room at the Warwick, during the period of the suit.

Q. Where you ate with Shapiro breakfast, noon and dinner?

A. No, sir. You forgot to read all that was on those expense accounts, sir.

Q. I will come back if you want me to read more. Stick with this for a moment and so will I.

A. Yes, sir.

Q. Vine Street means that all the exchanges—is that what they are called, these branch offices?

A. Vine Street and 13th. That is 9th Avenue in New York City, 44th and 9th Avenue.

Q. It is what is called in most cities film row; is that right?

A. Yes, sir.

Q. And they deliberately put their offices very near each other, sometimes most of them in the same building, so it would be convenient for a theatre operator to visit a lot of them at one time when he comes down to buy, right?

A. Most of them are scattered out there but of them

(1905)

are close by. They are not in the same building I meant to say.

Q. They are a few feet away.

A. No, maybe a half or three-quarters of a block away.

Q. And in those offices there are maintained sales offices, aren't there, with big signs how great their pictures are?

A. Yes, sir.

Q. And there is an office for sales there. You go in there and you sit down and you try to make a deal, when

you are dealing at goodwill with these people, you know, just as businessmen?

A. Yes, sir.

Q. When you are not just sending registered letters and telegrams, but when you go there to make a deal that is where you go?

A. They sent me a letter, sir. You have no objection. I have no objection to getting a letter from them.

Q. I should say not. They invited you to negotiate. My question is did you go there to negotiate?

A. No, sir, I did not; nor did they come to me. I don't think there is any indication that I went—

Q. Have you any grievance now, frankly, as man to man, have you any grievance because they didn't come to you rather than you come to them? Is that a grievance?

(1906)

A. If it is accorded to you, that privilege, I want that privilege accorded to me, yes, sir. I want to be contacted the same as they contact other distributors. If other distributors have to trek to Vine Street, I will trek to Vine Street.

Q. And you don't think other exhibitors go to Vine Street, other theatre operators?

A. They have said that they have gone to other people's offices to negotiate deals.

Q. Is it your grievance in this court, in this antitrust suit for treble damages, is one of your grievances that instead of your going to their offices, as so many exhibitors do, they should have come to you because you heard they once went to some other office?

A. Specifically what exhibitor? Certainly, exhibitors—

Q. Is this your grievance, that you want them to come to you?

A. Yes, sir, that is one of them.

Q. All right. In any event, we are clear now that on DESPERATE HOURS though, you, after a bid was re-

jected, your bid and other bids, you were invited to negotiate and you never went there?

A. It said, "We will negotiate." It didn't say, "Please come over and see me." It said, "We will negotiate with you, sir."

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(1907)

Q. Incidentally, this letter which is now marked Defendants' Exhibit 19, that was in your files, and we obtained it by calling for it.

A. Yes, sir.

(1908)

By Mr. Nizer:

Q. Now, you had testified about a picture called STRATEGIC AIR COMMAND. Another Paramount picture—

A. Yes, sir.

Q. —covering some Paramount grievance.

A. Yes, sir.

Q. Now, that was a picture about the Air Force starring Jimmy Stewart and June Allyson, is that right?

A. Yes, sir.

Q. It was a picture which described the heroic exploits of the United States Air Force as a subject, is that correct?

A. Yes, the Strategic Air Command.

Q. And this was the first motion picture made by Paramount Pictures on the new wide screen called VistaVision, is that right?

A. Plus. This was the one with the horizontal projector, sir.

Q. Yes, that is right. You have anticipated me correctly. Not only did it have VistaVision but it had these horizontal projectors, which meant you had to put in this special equipment for horizontal projectors.

A. Yes, sir.

Q. And it was in color?

A. Yes, sir.

Q. And it was a brand-new process and a great production,

(1909)

right?

A. Yes, sir.

Q. And the double-frame projector and special equipment also meant that it was going to be for the first time on a wider screen for Paramount, a VistaVision screen, is that right?

A. Well VistaVision isn't wide, sir. VistaVision is almost square.

Q. But this was to be a wide screen?

A. Yes, but almost square. This isn't the same—

Q. Oh, by wide I mean a larger screen.

A. Yes.

Q. And you knew, didn't you, you were advised that in only eight cities of the United States was there equipment enough at that time for these horizontal projectors with the double special frames to show this kind of process?

A. If that is what it says in the letter, eight cities, that is good enough.

Q. Now, you refused to make a bid for this picture STRATEGIC AIR COMMAND because you wanted to screen it before putting it in a theater, is that right?

A. Yes, sir.

Q. That is your grievance.

A. Yes, sir.

Q. So that in this case you never put in a bid at all, but

(1910)

your grievance is you didn't do so because you didn't screen it, they wouldn't screen it for you?

A. That is one grievance, sir.

Q. All right, let me follow that up.

A. Good.

Q. STRATEGIC AIR COMMAND, you know, was not screened in the Philadelphia territory for any exhibitors, right?

A. Not to my knowledge it wasn't, no, sir.

Q. By that you mean that is correct, to your knowledge?

A. Well, I don't know, it could have been screened in Philadelphia and I didn't know about it. I haven't heard of any Philadelphia screening.

Q. That is right. So far as you know that is correct?

A. Yes, sir.

Q. And you were advised that the reason for it was they didn't even have special equipment in a theater to process that, there was no screen for the screening of STRATEGIC AIR COMMAND, is that right?

A. In the City of Philadelphia.

Q. That is right.

A. No, sir.

Q. So that this picture was not merely denied a screening for you at the Viking Theatre, it was not screened for anybody in the Philadelphia territory in the regular way that

(1911)

screenings are run for all exhibitors, right?

A. Not in the regular way, no, sir.

Q. And then you testified that it was screened, you found out, in Washington, D. C. Do you recall your testimony?

A. I do, sir.

Q. And didn't you intend by this testimony to give the learned Court and the jury the impression that there was a screening for exhibitors in Washington, D. C.; was that the purpose of your mentioning that?

A. I didn't say it was screened for exhibitors, I said I learned it was screened in Washington, D. C. I didn't specify any exhibitors.

Q. Didn't you mean by that testimony, when you said you learned it was screened in Washington, D. C., to give the implication to this Court that at least in Washington it was shown for exhibitors as screenings are usually done; wasn't that the purpose in putting your testimony that way?

A. My purpose was, sir,—

Q. Please say yes or no.

A. No.

Q. It wasn't?

A. No, it wasn't.

Q. You just happened to stop there that way.

All right now, the fact is that the STRATEGIC

(1912)

AIR COMMAND, and you knew it, was not screened for exhibitors, but was shown to the Congress, the Senate, the President of the United States, the Supreme Court, all invited, the High Command, all the generals and the Air Force, at a very special function under the auspices of the Air Force in Washington; that is what you were referring to, weren't you?

A. Yes, sir.

Q. And you wouldn't call that really a screening, would you, in the sense that you have been talking about in this courtroom? Would you?

A. Yes, sir.

Q. You still would?

A. Yes.

Q. And you think it was fair of you, since you want us to be fair, to just testify that you learned the picture was screened in Washington, when what you knew had happened was that there was a very special function for the Government officials, and all the members of the House of Representatives and Senators to take a look at the glories of our Air Force in this special production; you knew that was the fact, didn't you?

A. That is what I learned, sir.

What I also knew was a fact was the fact that if the horizontal projectors were set up in Washington, D. C.

(1913)

and on occasion we have journeyed as far as Stamford, Connecticut, to look at a picture, so Washington would have been nothing. If the equipment was installed in Washington, and they can show it to the Congress and the military and whatnot, we saw no reason why we shouldn't be invited to a subsequent screening, utilizing the same equipment.

But, if you will remember, Paramount asked me to fly to the Coast at my expense to look at the picture.

Q. Now, first, Mr. Wren, with all due deference to your standing you don't consider that you should have been invited with the President and the Cabinet.

A. Definitely. I said subsequent screening, sir.

Q. And you don't know of any subsequent screening that was given to any other exhibitors at that occasion or thereafter, do you?

A. No, sir.

Q. So that you were not made an exception in this case at all from all the other exhibitors in Philadelphia, were you?

A. I wouldn't know that, sir. I know that I didn't get to look at it.

Q. Well, you have been around this city and you are making this claim; do you claim here that any other exhibitors of Philadelphia were told to come to Washington thereafter to see it, but you weren't extended that invitation? You weren't—

(1914)

A. Well, how would I know, sir, what was extended to other exhibitors?

Q. Do you mean that you haven't heard at the Coach Room as to whether other exhibitors were ever invited to

go to Washington? Now, are you really ignorant about that or can't you tell me that nobody ever was?

A. I don't know, sir.

Q. You don't know?

A. I know the Paramount district manager was there. I think he has admitted he was.

Q. So the Paramount district manager was there.

A. Yes, sir.

Q. This is Paramount's picture, isn't it?

A. Yes, sir.

Q. You have no grievance that a Paramount executive goes to his own picture?

A. No, sir, I have not.

• • •

(1915)

Q. Now, a few moments ago when I asked you whether you knew that no one in Philadelphia had seen STRATEGIC AIR COMMAND you said you didn't know, you couldn't be sure.

Weren't you advised by Paramount in a conversation with one of its representatives that the the picture was not being screened and wouldn't be screened in Philadelphia because there wasn't even the equipment with which to screen under this new process? Weren't you so advised, sir?

A. Yes. I got a telegram. It wasn't a conversation. I think I got a telegram from Mr. O'Shea.

Oh, I'm sorry. Howard Minsky told me that when he came to see me, about STRATEGIC AIR COMMAND.

Q. All right. Then I don't have to read it to you. So that you were told by Paramount—

A. Right, sir.

Q. —pretty early, very early in the game—

A. Right, sir.

Q. —that this picture was not going to be screened in Philadelphia, and then you also got a telegram about it later, when you made inquiry?

A. Right, sir.

• • •

(1917)

Q. Now, the only reason that you gave for not wanting to bid on this picture was the failure to screen?

A. Yes, sir.

Q. That was the only complaint you had at that time, wasn't it?

(1918)

A. Yes, sir.

Q. And even though you have told us that you had been advised orally and in writing that the picture wasn't to be screened in Philadelphia, nevertheless, you sent a special-delivery letter after that demanding a screening of the picture, didn't you?

A. Yes, sir.

I don't know whether it was a demand. I asked for—

Q. Wasn't that letter sent—pardon?

A. I don't know whether it was a demand.

Q. Well: "We feel that we should be afforded the opportunity to witness a showing before we are asked to submit an offer."

A. Right, sir.

Q. Let's say that you expressed that determination as to why you wouldn't put a bid in. So you sent by registered letter return receipt requested this written demand for a screening after you had been told that nobody in Philadelphia was going to have a screening, right?

A. Yes, sir.

Q. And weren't you at that time—hadn't you at that time already retained counsel to bring this suit in this court?

A. What date is this, sir?

(1919)

Q. March, '55.

A. I don't believe so, sir.

Q. You don't believe so?

A. No, sir.

Q. Were many of these telegrams and letters which we have had in this case ordinary business communications or were they after you had consulted counsel who was to bring this lawsuit?

A. I think the first time we consulted counsel, sir, was January or February of '56.

• • •

(1920)

The Court:

• • •

Now, as I understand, Mr. Wren, you say that your recollection is that you and Mr. Sley consulted counsel around January or February, 1956?

The Witness: '56.

The Court: '56.

The Witness: Yes, sir.

The Court: Right. Now, did you send any

(1921)

letters or telegrams in any way after January or February, 1956?

The Witness: Oh, yes, sir.

The Court: And they were sent—

The Witness: And before.

The Court: And before.

The Witness: Yes, sir.

The Court: In other words, there were some letters sent after you saw counsel?

The Witness: Certainly.

• • •

Well, Your Honor, these telegrams explaining this are after the letter.

Mr. Nizer: No, they are different telegrams, Mr. Sawyer.

Mr. Sawyer: There is no telegram.

Mr. Nizer: Please do not represent that I am distorting anything.

Mr. Sawyer: March 16 (indicating).

Mr. Nizer: You are talking of a different telegram, and I will prove it in a moment if you will—you are being impatient with me. You should not make that objection.

The Court: Restate your question.
I will sustain the objection if you have one.

Mr. Sawyer: My objection?

The Court: No, no, no. Restate the question.

Mr. Nizer: I will, sir.

By Mr. Nizer:

(1922)

Q. I am going to come to other telegrams that were exchanged, and letters that were exchanged with you, but when you told me before that there was a telegram as well as a personal conversation—you remember you said there was a

telegram, and then you said, "Oh, he told me at the early time of the game." That was a different telegram, wasn't it?

(1923)

A. Mr. Nizer—

Q. Listen to my question and answer it. Then you can make any explanation you want.

A. I don't understand your question. That is what I was going to say to you.

Q. Well, then, listen to my question.

A. Right, sir.

Q. If you don't understand, that is a fair observation. Ask me to repeat it.

A. Yes, sir.

Q. When I asked you whether Paramount had advised you that there would be no screening in Philadelphia, you said, "Oh, yes, they sent me a telegram," and also, "Oh, yes, I also talked to their representative."

Do you remember that?

A. Yes, sir.

Q. And I asked you whether that was in the early part of this. I think I used the phrase, "early part of the game," right?

A. Yes, sir.

Q. And you said it was.

A. Right, sir.

• • •

(1924)

Q. As early as February, 1955, Paramount's executive had told you that there would be no screening in Philadelphia for

(1925)

any exhibitor, is that correct?

A. Yes, sir.

Q. Yet in March, 1955, you sent a special-delivery registered return-receipt letter demanding a screening, didn't you?

A. I didn't demand, sir.

Q. I withdraw "demand." Requesting a screening?

A. Requesting a screening, and not—I don't believe—may I see the letter? I don't think I said it had to be in Philadelphia.

(1926)

By Mr. Nizer:

Q. Did you ask for a screening?

A. Yes, sir, I did ask for a screening.

Q. Look at that letter, and I am going to offer it in evidence. Did you send that letter? My only question is, did you send it, sir, so that we can save time?

A. Yes, sir.

Q. Is that your signature?

A. That is my signature.

Mr. Nizer: I offer it in evidence.

The Witness: Right, sir.

Mr. Nizer: Mark this, please.

(Letter dated March 11, 1955, addressed to Mr. Ulrik Smith, Branch Manager, Paramount Film Distributing Corporation, from Jay Wren, General Manager, was marked Exhibit D-20 (Paramount) for identification.)

Mr. Nizer: Your Honor, may I please read this?

Viking Theatre Corporation, March 11, 1955, to Ulrik Smith of Paramount, signed Jay Wren. Special Delivery, registered return receipt requested.

"Dear Ulrik:

"Re: STRATEGIC AIR COMMAND

"We are in receipt of your letter of March

(1927)

11, 1955, and enclosures dated March 10, 1955, inviting the Viking Theatre to competitively negotiate with first-run theatres in this city for the exhibition rights to a Special Advance Engagement of the captioned motion picture."

By Mr. Nizer:

Q. I stop for a minute to ask you a question, sir.

Is this your language or did someone else draft this letter for you?

A. I drafted that letter, sir.

Q. Without the advice of a lawyer?

A. Without the advice of a lawyer.

Mr. Nizer:

"In this connection, since distributors are obliged to screen motion pictures before soliciting offers, we feel that we should be afforded the opportunity to witness a showing of STRATEGIC AIR COMMAND before we are asked to submit an offer.

"Inasmuch as the Request For Offer Forms dated March 10, 1955, which were attached to your letter, specifically state: 'The Last Day Upon Which We Will Receive Offers For Consideration Is 3/16/55,' we would appreciate your advising us as to the exact time and place Paramount intends to screen STRATEGIC

(1928)

AIR COMMAND in this city.

"Kindest person regards.

"Sincerely,

"Jay Wren."

By Mr. Nizer:

Q. When you wrote "in this city," did you mean Philadelphia?

A. I evidently did, sir.

Q. Do you want to take back your suggestion that you weren't asking for a screening in Philadelphia?

A. No, sir.

Q. Do you want to take that back?

A. No, sir.

Q. That was a mistake, wasn't it?

A. Yes, sir.

Q. So after you knew that there would be no screening for any other exhibitor in Philadelphia, you wrote this letter asking for a screening in Philadelphia just for you, right?

A. Did I say—I wouldn't care if I was the only one looking at it, no, sir. It wouldn't make any difference to me. I wouldn't care if there was 50 people there, either, sir.

Q. And did you get a return?

A. I think that is when I got a telegram from Mr. O'Shea.

Q. Before you got an answer did you send a telegram to Mr.

(1929)

O'Shea?

A. I believe I asked if the only way—

Q. No, no. My question was, before you got an answer from Paramount did you send another telegram to Mr. O'Shea. Will you listen to my question.

A. You mean before I got an answer from Ulrik Smith did I send—yes, I believe I did. I believe I sent one asking if it was going to be exhibited in the same process in the suburban theatres.

Q. Your letter was March 11, which you will, I suppose, agree, arrived about March 12?

A. I agree.

Q. Now, on March 16th you sent this telegram to Paramount, didn't you (document handed to the witness)?

A. Yes, sir.

Mr. Nizer: I offer it in evidence.

(Telegram addressed to Ulrik Smith from Jay Wren dated March 16 was marked Exhibit D-21 for identification.)

Mr. Nizer: With Your Honor's permission, please, may I read this to the jury?

This is a telegram from Jay Wren, General Manager of Viking Theatre, to Paramount, Ulrik Smith, Branch Manager, addressed to his Philadelphia office, Paramount

(1930)

Film Company in Philadelphia.

Insist on reply to our registered letter of March 11, 1955 re STRATEGIC AIR COMMAND. Will not submit offer on STRATEGIC AIR COMMAND until afforded opportunity of screening SAC—

By Mr. Nizer:

Q. That means STRATEGIC AIR COMMAND, SAC?

A. I will agree to that, sir.

Mr. Nizer: —in Philadelphia. Regards.

By Mr. Nizer:

Q. Now, here in your telegram you were not only insisting on a reply but you were demanding again that it be screened specially in Philadelphia, weren't you?

A. I didn't deny that, sir. You read that to me and I read it. It says that. I agree with what it says.

Q. And you knew at the time that there wasn't even equipment in Philadelphia, according to what Paramount had told you the month before, with which to show this pic-

ture to anybody; just didn't have this new equipment. Eight cities in the whole United States had the equipment. You have told us that, haven't you?

A. I said if you said it was eight cities, I will agree with it.

Q. Well, you have accepted that as information you received,

(1931)

didn't you?

A. Yes, sir.

Q. I don't want you just to agree with me, sir.

Now, was this telegram sent to make a record, this telegram D-21?

A. Of course not, sir.

Q. Listen to my question. Just answer me. Was this telegram sent for the purpose of making a record, "Insist upon a reply, Want screening in Philadelphia"?

A. I answered that, sir.

Q. What is your answer?

A. I said, of course not.

Q. No. All right. Let's go on.

In addition to sending this telegram, did you send another telegram to New York?

A. With reference to the equipment?

Q. Yes.

A. Yes, sir.

Q. No.

A. With reference to the type of film to be used in the suburban area?

Q. No. Did you send the same telegram, in substance and effect, not only to the branch manager in New York but to the home office—not only to the branch manager in Philadelphia—

(1932)

pardon me—but also to the home office in New York?

A. I may have.

Q. You not only may have, you did, didn't you?

I show you this. Did you send that too? You sent two telegrams?

A. Right, sir.

• • •

The Witness: No, sir, this is not sent to New York. This is sent to Mr. Howard Minsky, Paramount Film Distributing, 248 North 12th Street, sir.

Q. That is Philadelphia?

A. Yes, sir.

Q. Well, what did you do, send two telegrams to Philadelphia, one to Ulrik Smith and one to Mr. Minsky?

A. Yes, sir. Mr. Minsky was the District Manager.

Q. I see. In other words, you not only sent a telegram to the Branch Manager down here on Vine Street but, in Philadelphia, to the District Manager.

A. Yes, sir.

(1933)

Q. Now, Mr. Ulrik Smith, to whom you sent the first telegram, and Mr. Howard Minsky, to whom you sent the second telegram, they are both in the same building, aren't they?

A. Yes.

Q. And you were in that building at that time, weren't you, on that day, according—withdrawn.

Were you in the building?

A. I don't recall.

Q. Did you go in to see them about this?

A. I don't recall.

Q. You just did it all by telegrams, as far as you can recall?

A. That's right, sir.

Q. And did you get a return reply from Paramount on this?

A. I must have got a reply, yes, sir.

• • •

(1934)

Mr. Nizer: I offer this in evidence.

(Telegram dated March 19, addressed to Jay Wren, Viking Theatre, Philadelphia, from Ted O'Shea, was marked Exhibit D-22 for identification.)

By Mr. Nizer:

Q. You had all these documents in your file when you were testifying originally about STRATEGIC AIR COMMAND, didn't you?

A. I would assume so, yes, sir.

Q. You didn't say a word about all these, did you?

A. I don't think, I don't know whether I was asked or not, sir. You found them in my files. I certainly didn't try to destroy them.

Mr. Nizer: May I read this, please, Your Honor?

This is an answer from Paramount, Ted O'Shea, to Jay Wren, Viking Theatre.

(1935)

Re your telegram March 16 we regret we cannot afford you an opportunity to screen STRATEGIC AIR COMMAND in Philadelphia before you submit an offer. We have no facilities in Philadelphia for such screening since no theatre is presently equipped to exhibit in our new double frame medium. Stage 17 in our studio in Hollywood is available for such screening. You are most welcome to avail yourself of the opportunity to see the picture there, provided you do so promptly and at your own expense. Please wire me at once if you desire a studio screening letting me know when you will be there so that I can make the necessary arrangements. Regards. Ted O'Shea.

By Mr. Nizer:

Q. You said you weren't asking for a screening necessarily in Philadelphia a few moments ago?

A. I didn't think I was, sir. I was wrong.

Q. You were wrong about that?

A. Yes, sir, I was wrong about that.

• • •

(1936)

Q. Did you make any effort to go to Hollywood to see this picture?

A. No, sir, I did not.

(Counsel confer.)

By Mr. Nizer:

Q. When I said go to Hollywood at your expense, of course I mean't the corporation's expense.

A. Yes, sir.

(Counsel confer.)

(1937)

By Mr. Nizer:

Q. Now, thereafter, I think that follows next, March 21, did you send this telegram to Paramount?

A. Yes. That is the one I referred to earlier, sir.

Mr. Nizer: All right. May I mark this in evidence, Mr. Sawyer?

(Telegram from J. Wren to E. K. O'Shea, dated March 21, 1955, was marked Defendants' Exhibit 23 (Paramount) for identification.)

• • •

Mr. Nizer: Re your telegram of March 19. Are we of the Viking Theatre correct in assuming that the motion picture STRATEGIC AIR COMMAND is to be released only in your new double frame medium and that no other type of VistaVision prints were or will be made. Please advise. Kindest personal regards.

Jay Wren
General Manager
Viking Theatre

By Mr. Nizer:

Q. And then you received this answer to that telegram, (1938)
didn't you?

A. Yes, sir.

Mr. Nizer: May I offer this in evidence?

(Telegram Ted O'Shea to Jay Wren, dated March 22, 1955, was marked Defendants' Exhibit 24 (Paramount) for identification.)

Mr. Nizer: This is an answer from Ted O'Shea of Paramount to Jay Wren:

Answer your telegram March 21 our letter March 10 explains reasons for special advance engagements STRATEGIC AIR COMMAND and limited number such engagements. It is our plan to show STRATEGIC AIR COMMAND for these special advance engagements in not to exceed eight important cities of United States in our new double frame medium only. Thereafter this picture will be prereleased in selected geographical locations in 35 mm Vista Vision prints for use with standard projectors in order to create greatest publicity and audience penetration ever accorded any motion picture. If you wish to see picture in Hollywood you must advise us today as we cannot delay awarding picture any longer Regards

Ted O'Shea

By Mr. Nizer:

Q. So you understood by this telegram D-24 that Paramount,

(1939)

despite all that had preceded it, was still holding up an opportunity for you to bid and holding up others who had bid for the picture; you understood that to mean that, didn't you?

A. Yes, sir.

Q. Didn't you think that was pretty courteous of them, despite all this return receipts and everything else, and registered letters, they were still giving you a chance if you wanted to put in a bid, right?

A. Yes, sir, by telegram.

Q. And you didn't put in any bid, did you?

A. No, sir, I didn't see the picture.

Q. So your whole grievance in this matter is that the picture of STRATEGIC AIR COMMAND—withdrawn.

Now, another Paramount picture that you testified about was TEN COMMANDMENTS.

A. Yes, sir.

Q. This picture involved a production cost of about $13 million, did it not?

A. That is what I am told, yes.

Q. And with distribution, of course, probably sixteen or eighteen million dollars, right?

A. Possibly, yes.

Q. And all this investment of about $13 million in one piece of celluloid was, according to general industry

(1940)

knowledge that you had, the highest production cost of a motion picture up to that time in the history of the motion picture business, wasn't it?

A. Yes, sir, from what I read.

Q. And this picture was of such magnitude that it ran for about four hours, when it was shown in a theater.

A. Close to it, yes, sir.

Q. And, of course, it had a reserve-seat policy?

A. Right, sir.

Q. Which would mean what, a hard-ticket policy?

A. Twice a day, or ten shows a week, depending on the holidays again. Sometimes it might run many more.

Q. You also knew that Paramount had organized a special sales force to sell this picture, didn't you?

A. No, sir, I didn't know that at that time, the first time I heard of this.

Q. Well, you knew that Charles Boasberg was put in charge of the sales organization exclusively dedicated to the TEN COMMANDMENTS.

A. Right. Right.

Q. That is what I am referring to.

A. I thought you meant on advertising.

Q. No, no.

A. I am sorry.

(1941)

Q. Sales.

A. Right, sir.

Q. So that Paramount having an investment of fifteen or sixteen million dollars in this one piece of celluloid was putting on a special organization to dedicate it to the sales, to try to recapture this money and also make some profit; it was a very big risk, wasn't it, at the time?

A. Yes, sir.

Q. And therefore you also knew, didn't you, that this picture was not going to be bid for by anybody, this wasn't going to be put up for bids. You knew that, didn't you?

A. I believe that is what they told me, yes, sir.

Q. What Paramount was going to do was to select what it thought was the best theater in each town where it would be most suitable for this kind of a hard-ticket policy, special reserved policy, to place this property in an effort to recapture this enormous investment, the highest in the history of the industry; that is what Paramount was going to do, they told you that?

A. Yes, sir.

Q. And ultimately the Paramount, without any bids or negotiations, selected—with anyone else, so far as you know, selected the Randolph Theatre, which has twice the number of seats of the Viking, at which to play this picture; that is what ultimately happened, right?

(1942)

A. Well, not quite twice, but they selected the Randolph Theatre, yes, sir.

Q. Not quite twice?

A. No, sir.

Q. The Randolph Theatre, according to the chart, is 2020 seats, right?

A. And the Viking Theatre is 1017, sir.

Q. Oh, so you mean by fourteen seats it is out of the way, right?

A. Right, sir.

Q. Is that what you mean?

Q. Well, with the exception of those fourteen seats it is twice the size?

A. Yes, sir.

Q. All right. And the Randolph Theatre had played CAINE MUTINY, GUYS AND DOLLS, there were certain experiences at that theater that had occurred in the past—I am not asking whether any other theater had had good pictures, but that theater had had those two good pictures, hadn't it?

A. Yes, sir.

Q. Now, you recognize, Mr. Wren, or don't you, the right of a distributor owning a property like TEN COMMANDMENTS, costing $13 million at least to produce, bearing the risk of

(1943)

recovering this huge investment, to choose any theater it pleased which would be most suitable for that particular production; you recognize that, don't you?

A. Yes, sir.

Q. You said when you testified that the Aldine Theatre, which preceded the Viking, at the same location, which used to be the Aldine, had played the old TEN COMMANDMENTS. Do you remember you gave that as an argument?

Q. The Aldine Theatre had played the TEN COMMANDMENTS in 1924, had it not?

A. I am not sure of the year. I just knew that it had played there.

Q. Yes, in 1924.

A. That I do not know, sir.

Q. Well, it was a silent picture, Cecil B. DeMille's TEN COMMANDMENTS—you can look it up in the records.

A. I am not questioning that, sir. I said the exact year I do not know.

Q. Oh, you accept it?

A. Yes, sir.

Q. You accept the figure?

A. Right, sir.

Q. That was thirty-seven years ago?

A. Yes, sir.

• • •

(1945)

Q. And that is your grievance on TEN COMMANDMENTS?

A. Well, as I have indicated, sir, and I think I so testified in depositions, I was told that they wanted the Goldman Theatre, they wanted a theatre of about 1500 seats. And I told them that the Goldman—

Q. How big is the Goldman Theatre?

Mr. Sawyer: Would you just let him finish?

By Mr. Nizer:

Q. How big is the Goldman Theatre?

A. The Goldman Theatre is less than 1200 seats, sir.

Q. So they couldn't have said the Goldman Theatre.

A. They did, sir, and I suggested that Mr. Boasberg personally go down and check the Goldberg—the Goldman Theatre, to see if it had 1500 seats.

Q. This picture played the Randolph Theatre, didn't it?

(1946)

A. Yes, sir, I understand that.

Q. And didn't--what you were told was they wanted it to play a Goldman theatre, meaning the Randolph?

A. No, sir. They said they were looking—

Q. There is no confusion in your mind?

Mr. Sawyer: Let him finish.

The Court: Now let him finish, Mr. Nizer.

A. They were looking for a theatre of about 1500 seats, the size of the Goldman Theatre, and I told Mr. Boasberg this information was wrong. This was right in the 1918 Restaurant with Mr. Howard Minsky; to go check the Goldman Theatre. It did not contain 1500 seats.

Q. Now, let's assume for the minute that they didn't even know with respect to the TEN COMMANDMENTS how big the theatre was that they were considering. Let's assume that for a moment.

A. Right, sir.

Q. Do you consider that because you had pointed out a correction of the number of seats at the theatre that that was an argument why you should receive the TEN COMMANDMENTS?

A. Nothing of the kind.

Q. You don't consider that, do you?

A. I was just indicating the Viking—

Q. Please answer my question first.

(1947)

A. I said "Nothing of the kind," sir.

Q. Nothing of the kind, all right.

A. It was only to indicate that the Viking was almost as big as the Goldman Theatre.

Q. But the Viking isn't as big as the Randolph, where it played?

A. No, sir, and it is not as big as the Goldman. I said almost as big as the Goldman.

Q. All right. Now, when there is a peak hour in a motion picture theatre there may be an overflow of patrons even though the picture does poorly for the whole week, is that correct?

A. Yes, sir.

Q. And even on pictures that have done badly, let's say, you have had many occasions when during certain Saturday nights or Sundays or other peak hours you had to stop selling tickets, your theatre was filled, isn't that so?

A. I can't recall when I stopped selling tickets.

Q. You never did that, is that your testimony?

A. I just keep putting them in, sir.

Q. What?

A. I just keep selling tickets and putting them in or lining them up outside waiting for the break.

Q. Have you ever had people come out and have to give them

(1948)

a refund?

A. Yes, sir.

Q. A lot of them?

A. Maybe 50 or 60 on a busy night.

Q. So that people who have already bought tickets, who have already gone into the theatre, come out and ask for their money back?

A. Despite—

Q. Because they haven't had a seat, is that it?

A. Despite the fact they were full at the time they bought a ticket that there was standing room only, and when they came out—

Q. Are there people who when you tell them there is standing room only, who do not buy tickets?

A. Yes, sir, a lot of them walk off.

Q. A lot of them?

A. Yes, sir.

Q. And in addition to that, during those peak hours, there are people who have been inside and come out and ask for refunds?

A. Yes, saying they misunderstood, and we give it to them gladly.

Q. When you turn away people who don't want to come in because you announce standing room only, those patrons and

(1949)

that income is lost so far as you are concerned and the distributor is concerned, who has a percentage; these people just don't wait until tomorrow and come back Monday night? That is lost patronage, isn't it?

A. Well, there is two schools of thought on that, sir.

Q. What is your school?

A. Well, the extended run proves that they do come back at some time.

Q. Well, if on a Saturday night let's say a couple of hundred people or a hundred people do not enter your theatre when they want to because you announce standing room.

A. Right, sir.

Q. Or a Sunday night. Do you think that those patrons and income have been lost to your theatre for Monday, Tuesday, Wednesday and Thursday? Do you think that that is a loss to the theatre in income? What is your school of thought on that?

A. It is hard to determine, sir. I don't know what night they come back.

Q. It is hard to determine?

A. Or if they do come back.

Q. And you have had a good many pictures playing at your theatre which you testified were not good, and you even testified on some that you suffered a loss, but where nevertheless you turned away people at certain peak hours, haven't you?

(1950)

A. Well, I would have to know what picture you refer to.

Q. Well, without referring to a specific picture for a moment, don't you know that to be a fact?

A. On GRAY FLANNEL SUIT, on STRANGER, on ATTACK on a Saturday night, yes, sir.

Q. Not on weak pictures?

A. No, very seldom, sir.

Q. What is that?

A. Very seldom, sir. The gross would indicate that.

Q. Haven't you had refunds on weak pictures that you have played because on certain peak hours you couldn't accommodate them, you didn't have enough seats?

A. Oh, certainly.

Q. Yes?

A. Yes.

Q. And of course if you have a successful picture, that just increases the number of refunds, doesn't it?

A. That's right.

Q. And it increases the number of people who are turned away from the boxoffice during the peak hours?

A. And it increases the gross receipts.

Q. It increases the gross receipts during the peak hours until your seating capacity and standing room may be filled, but after that they are turned away, aren't they?

(1951)

A. Yes, sir.

Q. Well, when you have refunds you make a report of that to the distributor, when you turn in the daily boxoffice report?

A. They are attached to the boxoffice statements—or, no, there is a listing there of the number of refunds.

Q. The practice is, is it not, at the end of every day to turn in a daily boxoffice report to the distributor?

A. Yes, sir.

Q. What is the ordinary practice? Do you also send in his percentage? He is partners with you on a percentage basis.

A. No, no, we send him the boxoffice statements usually at the end of the engagement or at the end of any given week.

Q. And with the money?

A. No, sir.

Q. When do you give the distributor his share? When do you send that in?

A. Depending on the advertising deal, as to whether it is to be deducted from film rental or not.

Q. Yes. I mean after you have made whatever deductions under the contract. When do you send in the money?

A. Within 7 to 21 days after the engagement.

• • •

(1952)

Q. Have there been suits by Universal for boxoffice receipts which they collected after three years?

A. Not for boxoffice receipts, for guarantees, sir.

Q. For money due under the picture?

A. Right, sir.

Q. And there was a trial and an appeal, and then you paid the amount?

A. Yes, sir.

Q. Didn't the same thing happen with Fox?

A. Yes, sir.

Q. And that took several years before they collected their money?

A. No, sir.

Q. How long, two years before you lost the case?

A. We didn't lose that case, sir. It never came to trial.

Q. You paid that after you lost the Universal case?

A. I don't know whether it was before or after. There was a settlement out of court.

Q. It was after.

(1953)

A. It was after?

Q. Yes. And there is a Loew's suit still pending, isn't there?

A. Yes, sir.

Q. In which they sued you?

A. And I think all three suits—

Q. Now, coming back to refunds—

A. Pardon me, sir, pardon me. I think all three suits were instituted within a period of weeks.

Q. No doubt.

A. That's right, sir.

Q. Now coming back to your refunds,—

A. Yes, sir.

Q. —you say that you marked the number of refunds on the boxoffice statement?

A. Yes, sir. You have our boxoffice statements.

Q. Now, STUDENT PRINCE, did you testify that you lost money on that engagement?

A. I don't remember testifying about losing money on the STUDENT PRINCE engagement, sir.

Q. No, that was before your time. I am not sure myself. I am asking. Did you on that—

A. I don't recall.

• • •

(1954)

Q. PRODIGAL was a Loew's picture. Did you lose money on that engagement? Did you testify about that, can you tell me? I haven't it in front of me.

A. I believe we did, sir. Yes, yes.

Q. All right, thank you.

You turned back 62; you reported to us 62 refunds on May 11, 1955 for that picture, didn't you?

A. If that is what we reported, yes, sir.

Q. It is from your records and you can check it.

And on Saturday night, the first Saturday night, 40 refunds.

A. May I ask what day May 11 was, sir?

Q. May 11, '55? I don't know.

Mr. Haviland: Wednesday.

Mr. Nizer: Wednesday?

By Mr. Nizer:

Q. Wednesday. It was a preview.

A. Yes, preview day. That is what I thought. Two pictures

(1955)

showing.

Q. Yes.

A. Right, sir.

Q. And refunds on Saturday, 40. 40 refunds.

A. If that is what it says there, yes, sir.

Q. And on Sunday, May 15, 8; on the second Saturday, 31; on Sunday, 35; on the third Saturday, 24 refunds, people who came back and asked for their money back.

A. Yes, sir.

Q. On the fourth Saturday, 28; on the fifth Saturday, 18; on the 6th, 6.

Now, in addition to those refunds there were undoubtedly a good many people who were turned away because there were no seats for them. That is what those refunds would indicate, wouldn't they?

A. Certainly.

Q. On NOT AS A STRANGER, I will just read them off: On Thursday, 152 refunds you reported to us, 152 people asked for their money back.

A. Preview day was it not, sir?

Q. Pardon?

A. Wasn't it preview day?

Q. June 30.

A. I think it was preview day.

(1956)

Q. July 1, Friday, 29 refunds; Saturday, 35; Sunday, 30; Monday, 55.

A. July 4.

Q. On Monday night.

A. A $6000 day.

Q. And you couldn't accommodate the people at that peak date?

A. Yes, sir.

Q. You have had thousands of refunds during the period of this suit, haven't you?

A. I don't know about thousands, sir. I know we have had refunds. You have just read them off. I don't know the number.

Q. Well, I count them up. You can check me. Well over 3000, close to 4000.

A. Then you have checked it, sir. It shows that we were reporting them.

Q. Now take on Universal. You have claimed that you lost money on those. There was a suit on that one. Didn't you have 145 refunds reported to us on—

A. On which picture?

Q. On ALL THAT HEAVEN ALLOWS.

A. Probably.

Q. Friday night, January 13, 1956, the preview night.

(1957)

A. Right, sir.

Q. And to be brief about it, you have had refunds on almost every Saturday night of the history of this theatre during the period of this litigation, haven't you?

A. Possibly.

Q. And there were 124 Saturdays during the period of this lawsuit, and your boxoffice statement shows that on five or more—withdrawn.

Your boxoffice statement shows that you had out of 124 Saturdays 58 Saturdays of refunds of more than 5. Would you accept—

A. Of more than 5 what, sir?

Q. Refunds.

A. Of more than 5 refunds for that particular period?

Q. Yes, 20, 30 or 40, but over 5. I didn't take any under 5.

A. I will accept that.

Q. And of course you have had refunds during the week, but those would be less, 8, 6, 10. On Saturday night it would be 30, 40 or 50 or 100, in one case, or more. Is that right?

A. Well, if that is what you indicate, sir, it is all right with me.

Q. So that this represents on these figures which I have taken from your records, and subject to your check, this represents refunds of about 47 per cent of the Saturdays that

(1958)

were playing had more than 5 refunds straight along?

A. I don't understand your percentage, sir. 47 per cent of what?

Q. Of the Saturdays, 124 Saturdays. In 47 per cent of those Saturdays—

A. You mean about half of the Saturdays I made refunds?

Q. Of more than 5.

A. I will accept that.

Q. From 20, 30, 40.

A. I will accept that.

Q. You will accept that?

A. I will accept that, yes, sir.

Q. Now, do you still say—I read to you the following answer that you made at this trial on May 31, when you were testifying under cross-examination.

Mr. Sawyer: What page, please?

Mr. Nizer: 1712.

By Mr. Nizer:

Q. Q. But I say the seats wouldn't even be a factor, according to your opinion?

A. No, sir, no, sir.

Did you make that answer?

A. I did, sir.

Q. And you stand by that?

(1959)

A. And I wanted to develop it.

Q. No, no, just answer my question.

A. I stand by it, and I wanted to develop it.

Q. That is all I am asking.

A. That's right.

Mr. Nizer: May I have the blackboard for a second, please?

By Mr. Nizer:

Q. Mr. Wren, you have testified about guarantees and the importance of guarantees. Do you recall that?

A. Yes, sir.

Q. Now, I want to ask you some questions about that and I want to demonstrate it so you can see it more easily, and I hope the jury can see it more easily.

On the Fox picture MAN IN THE GRAY FLANNEL SUIT, the guarantee you offered and the national film rental (writing on blackboard).

Now, the national film rental, just to make it clear again, is what that picture grossed boxofficewise throughout the

nation in the next two or three years. In other words, when it was finished, how much had it done, how successful was it at the boxoffice receipts, right? That is the national—

(1959a)

A. Film rental returned to the distributor, right.
Q. That's right.
A. O.K., sir.
Q. Boxoffice revenues?
A. Right, sir.

(1960)

By Mr. Nizer:

Q. The national film rentals are the film rentals paid to the distributor from the exhibition of that picture nationally?

A. Yes, sir.

Q. Now, I am going to take your guarantees and compare them with the national film rental of these pictures and I want to ask you some questions about it.

THE MAN IN THE GRAY FLANNEL SUIT, you guaranteed—that was the highest—$106,500 and the national film rental of that picture was, in round figures, three million six.

On PICNIC you only offered a guarantee of $27,500 and the national film rental was $6,132,000. So it is clear, isn't it, that you offered a very small proportionate guarantee on a picture that did twice as much as the picture on which you offered $106,000 guarantee, right?

A. Yes, sir, with an explanation.

Q. Go ahead, sir.

A. That is $27,500 more than my competitor offered for the same picture, which shows that I had $27,500 more confidence in PICNIC than my competitor, who got the picture without a guarantee.

Q. If you wanted to get it in, it has nothing to do with my question, there it is.

(1961)

A. Thank you.

Q. And now let's proceed and answer my questions.

A. Yes, sir.

Q. All I am saying is that in exercising your judgment you offered over $100,000 for a picture that ultimately did three and a half million dollars, and you only offered $27,000 for a picture that did six million?

A. Yes, sir.

Q. That would indicate, even by itself, that when an exhibitor offers a guarantee he is exercising a judgment of what he expects that picture would do and that judgment can be terribly off line, can't it?

A. Right, sir.

Q. CAROUSEL—before I put down CAROUSEL. It can be terribly off line, and if he has made a mistake in judgment he can suffer a loss?

A. Yes, sir.

Q. And if he suffers a loss, that is, of course, the result of his own exercise of bad guess or bad judgment, isn't it?

A. Yes, sir.

Q. And, of course, nobody can then say, well, the other fellow had a better judgment in this case; he wouldn't give as much, therefore, we owe you the money back. That isn't

(1962)

your claim here, is it?

A. No, sir. We have a claim on why we put up $106,500, sir.

Q. CAROUSEL, $80,000. That was what you guaranteed in that case?

A. Yes, sir.

Q. And that picture had a $2,800,000 national film rental.

Perhaps you better read off the national film rentals just to check it at the same time. Have you got it in front of you?

A. No, I haven't got it in front of me.

Q. All right. And BUS STOP you only offered $15,000 guarantee and that had a higher national film rental, $3,288,000.

So you offered five times higher guarantee for a picture which did a million dollars or $800,000 less national film rental. You plunged five times over the national film rental demonstration in subsequent years, correct?

A. Yes, sir.

Q. So that judgment, in making an offering guarantee, the skill of the showman, his ability to foresee, is one of those imponderable elements which every exhibitor tries to exercise, right?

A. Yes, sir.

(1963)

Q. And that is why one buyer or one exhibitor is deemed a good operator and the other a weaker operator. Somebody has a better batting average on guessing how these pictures are going to do and what they gamble on, right?

A. Not necessarily.

Q. Well, not necessarily could be true about—

A. If I could get pictures, as other people do, without guarantees, I am perfectly willing to get in the same league.

Q. Mr. Wren, right now—we are going to go into every facet of your claim.

A. Right, sir.

Q. Right now I am asking you about this subject matter.

A. Yes, sir.

Q. But since you opened the door to me, I will ask you one question about your tangent road. It is true that if you are a distributor, you are Paramount, and somebody offers you a $25,000 guarantee say for a small theatre, the World Theatre, 500 seats, and the next fellow with a 3000-seat house offers you no guarantee but 50 per cent, 40 per cent sliding scale, and it turns out later that the World Theatre which offered $25,000 guarantee was so much less

than the film rental which Paramount, you, got, namely, $200,000 let's say, that guarantee in that case doesn't mean a darned thing, does it? Forgive my colloquialism.

(1964)

A. Well, I can't agree with you, sir.

Q. All right, we leave it then. Come back to it sometime.

A. Right, sir.

Q. PROUD AND PROFANE $50,000, that was the guarantee. I am taking your big guarantee.

A. Yes, sir.

Q. Two million nine, I will count that three million national film rental.

BRIDGES AT TOKO-RI, $22,000 guarantee. You offered less than half, right?

A. Yes, sir.

Q. But that picture was almost double, four million—no, not double—four million, a million three hundred thousand more as it turned out?

A. Right, sir.

Q. Only one more.

THE LAST TIME I SAW PARIS you offered a $40,000 guarantee and that picture had a 2-6 national film rental.

BAD SEED you offered $17,500 guarantee but that picture was higher, two million eight. So you offered less than half the guarantee for a picture that did more national film rental that the other picture, right?

A. Yes, sir.

Q. As it turned out, of course?

(1965)

A. Yes, sir.

Q. Therefore, without giving more illustrations, would you agree with the proposition that this business is a business in which the exercise of judgment, or, call it guess or instinct or showmanship, plays a leading part in whether

you will make a profit or a loss, isn't that correct, on everybody's part?

A. If we have to guess in the same channels, yes.

Q. And when you guess $106,000, if you suffer a loss or if you guess right and you only guess a small guarantee and you do very well, you either profit or lose depending on the exercise of your judgment; isn't that so?

A. Yes, sir.

Q. Now, similarly, to be fair about it, the same is partly true but in a different way for the distributor. He gets two bids. One bid gives him a series of sliding scales, 40 to 50, 30 to 35, all these complicated figures that change with each different level of income, right?

A. Yes, sir.

Q. And then another bid gives him instead of those figures a straight 40 per cent but with more playing time, let's say six weeks instead of four weeks; and then he compares the two theatres, their locations, their size, the skill of operation, and he makes a plunge. He says, I think I will

(1966)

get more money out of B than I will out of A, and he may turn out to be wrong later, may he not?

A. Yes, sir.

Q. It will happen that although he chose B instead of A the picture doesn't do as good in B; it doesn't even come up to the guarantee of A perhaps in some instances. But that doesn't mean anything but that his judgment in the exercise of his choice was defective, just as your judgment may be defective when you offer these sums; isn't that correct?

A. Yes, sir.

Q. It works both ways, doesn't it?

A. Yes, sir; to a degree.

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(2011)

Q. WAR AND PEACE was another Paramount picture about which you testified, is that correct?

A. Yes, sir.

Q. And that was a picture which had Audrey Hepburn, Anita Ekberg, Henry Fonda, Mel Ferrer—

A. Yes, sir.

Q. —as stars?

A. Yes, sir.

Q. And it was a huge production which cost about five or six million dollars?

A. I think we had a letter on that, sir.

Q. What is that?

A. I think we have a letter on it, read a letter on it, on WAR AND PEACE.

Q. I am just asking you whether you haven't stated that you were informed—I don't mean that you went over the cost sheets—that this was a five or six million dollar picture—

A. Yes, sir.

Q. —as you knew it was, and you accepted that.

A. Yes, sir.

Q. Now Paramount, you also knew, had announced that it was

(2012)

going to go all out to couple this picture with the TEN COMMANDMENTS, as two of the greatest pictures ever made, is that right?

A. If that is what they said in that letter, yes, sir.

Q. And in this case too Paramount developed a special organization, sales organization, to sell the picture, because it was a very special kind of production, correct?

A. That I don't recall, sir, they may have.

Q. And you were invited in this case, together with other exhibitors, on April 5, 1956, to put in a bid by April 12 at five p.m. for this picture, is that correct?

A. If I could see the request for offer I could tell you if it was correct, sir.

Q. Well, I will show you the request.

Don't you remember that without looking at the request?

A. Not those exact dates, no, sir.

Q. Well, at page 1119 of your testimony to Mr. Sawyer, you read the invitation, and you gave the date as April 12, five p.m. I don't know whether you stated five p.m., I haven't read it all, but I show you this document and ask if that is correct.

A. This says 4/12/56 in pencil over 4/10/56 typed.

Q. So it does, and the date was what, 4/12/56?

Mr. Sawyer: Yes.

(2013)

The Witness: I say 4/12/56 over typed 4/10.

By Mr. Nizer:

Q. And your time was five p.m., right?

A. Yes, sir.

Q. By April 12, to put in a bid for this picture if you wished to?

A. Right, sir.

Q. So then on April 5—between the 5th and April 12th at five p.m., in those seven days, you had to make up your mind on behalf of your company whether you were interested in putting in a bid and if so which one, is that right?

A. Yes, sir.

Q. And if you didn't want to put in a bid that was your prerogative and privilege, no one compelled you to do so?

A. No, sir.

Q. It wouldn't have been wrong of you if you wanted to ignore the picture, right?

A. No, sir.

Q. Now, on the last day of April 12, you sent a telegram concerning this matter to Paramount, didn't you?

A. I believe I did.

Q. Between April 5 and April 12 you sent no communication to Paramount nor talked to anybody in the Paramount organization about this picture, did you?

(2014)

A. I don't know whether I talked to anybody or not, sir.

Q. Well, you don't recall doing so?

A. I say I don't recall whether I spoke to anybody in Paramount or not about it.

Q. Did you send any communication to Paramount between April 5th and 12th as to whether you were going to put in a bid?

A. I believe I did.

Q. When?

A. That I don't know. I would have to see the—whatever the form of communication is: letter, telegram, or whatever it was we sent.

Q. I show you this telegram and ask you if that is the telegram which you sent in that matter.

Mr. Sawyer: May I see it?

Mr. Nizer: Yes (handing).

(Counsel confer.)

By Mr. Nizer:

Q. Is this the telegram that you sent to Paramount on April 12, the last day that you had?

A. Yes, sir.

Mr. Nizer: I offer that in evidence. Any objection?

Mr. Sawyer: No objection.

(2015)

(Telegram of April 12 from Jay Wren to Paramount was marked Defendants' Exhibit 29 (Paramount) for identification.)

• • •

Mr. Nizer: Jay Wren sends this telegram, April 12, to Ulrik Smith of Paramount Film:

Re your solicitation letter and request for offer dated April 5, 1956 covering a special engagement of the motion picture, WAR AND PEACE, in Philadelphia beginning September 13, 1956. In this connection this is to advise you that until such time as they are afforded the opportunity to screen the motion picture WAR AND PEACE, the management of the Viking Theatre is unable to submit an offer for a license to exhibit this attraction. However please advise us if an offer may be submitted on the basis outlined in your solicitation letter with the understanding that if after screening WAR AND PEACE the management of the Viking Theatre decided that the motion picture is not of the caliber anticipated, they may withdraw the offer without

(2016)

prejudice. Kindest regards

Jay Wren

By Mr. Nizer:

Q. Now, you were to get in a bid, if you had one, on this date, April 12, at five o'clock.

When did you send this telegram? Look at it and tell me.

A bid was due on April 12 at five o'clock. When did you send that wire?

A. It looks like 5:16 p.m., April 12, sir.

Q. And look at the back of it, sir. Do you see?

Mr. Sawyer: He has not read it quite accurately. Let me show him a better copy. You will not disagree that that is wrong.

By Mr. Nizer:

Q. It arrived at the telegraph office on April—what hour? Look at the front. What Mr. Sawyer is saying is correct. It was sent at 4:35, wasn't it?

A. Yes, sir, 4:35, and here—

Q. And it arrived?

A. 5:16.

Q. That is right. At the telegraph office.

A. That I don't know, sir. It just says 5:16.

Q. All right, it arrived 5:16. And look at the back of that

(2017)

telegram and tell me what happened to it. Was the office closed where you sent it, the Paramount office?

A. It says: MSGR, XFA.

Q. Don't read all the initials, read the ones that are circled.

A. NH, CLSD.

Q. What does "CLSD" mean?

A. Probably closed.

Q. And that means that the office you sent it to was closed, doesn't it? Isn't that what it means to you?

A. I would assume that is what it indicates.

Q. And when was it returned therefore to the telegraph office?

A. April 12, 6:04 p.m.?

Q. So at 6:04 that night your telegram was returned back to the telegraph office because the Paramount office was closed. Is that what you make out of this?

A. Yes, sir.

Q. Do you know from your experience in dealing with these companies that their exchange is closed at five o'clock?

A. Between 5:00, 5:30.

Q. And then you didn't submit a bid to Paramount even at this late moment, you asked for a screening before you would submit a bid, is that right?

A. I said, unless we had a screening, as I remember this now,

(2018)

unless we had a screening we could not submit a firm bid.

Q. Yes, and you asked them—

A. However, we wanted to be advised if we could still submit an offer on a conditional basis; if we were afforded a screening after we submitted the offer, then we had a right to withdraw if it didn't live up to our expectations or come to our expectations.

Q. Of course, between 4:35, when you sent this wire, and 6:05, when it was returned, you knew, of course, that no screening could be arranged at that time for you before five o'clock?

A. Oh, naturally not. Certainly not.

Q. Of course not. This picture took how long to screen?

A. Three hours and 28 minutes. I remember the ads.

Q. You had April 5, April 6, April 7, April 8, April 9, April 10, April 11. Did you ask for a screening during those days by anybody?

A. I may have, sir.

Q. Not may have, did you?

A. I don't know, sir. Not in writing, no, sir.

Q. So you wait until 4:35 of the day on which a bid is to be submitted and at that time you say, unless you have a screening you can't make a bid, and will you let me make a bid conditionally, on a screening. Is that it?

(2019)

A. It says, "however." If they had sent back and said: We are sorry, the closing date, you cannot.

Q. You would have no grievance?

A. Why, I state as much in there, I say that if I can I would like to, if I can't, I can't.

Q. So that if at that moment Paramount had said, You are too late, five o'clock is past, you sent your wire after

the closing time, no deal with you, sir, you are late, you would have had no grievance with respect to WAR AND PEACE, would you?

A. Absolutely not. I stated that unless I could screen it.

Q. What did Paramount do? It didn't just turn you down out of hand, did it?

A. No, sir.

Q. What did it do?

A. As I remember, I received a letter from Mr. Phillips, counsel for Paramount.

Q. Incidentally, did you send this telegram pursuant to a consultation with your lawyers in this matter, or was it just an ordinary business communication?

A. Business. I had no lawyers.

Q. You didn't consult your lawyers before you sent this?

A. No, sir. I had no lawyers whatsoever.

Q. Let me read to you the following question and answer, sir, page 648 of your deposition.

(2020)

A. Pardon me, is this 1956?

Q. Is what 1956?

A. This time we are speaking of, 1956, right?

Q. Certainly.

A. Well, then I would have spoken to lawyers, yes. We engaged—

Q. Do you want to take it back before I read your testimony?

A. I just remembered the date. If it is April, 1956, absolutely we had counsel by that time.

Q. Not only did you have counsel, you had a conference with your lawyers, and you testified that it was pursuant to the consultation that you sent this telegram, did you?

A. Well, if that is what I testified, that is the truth.

Q. Now, without saying "if," that is the truth, isn't it?

A. If we had—we had counsel at that time and I must have consulted with them, yes.

Q. So this wasn't just a business transaction, you were consulting with your lawyers in preparation for a suit, weren't you, when you sent this telegram?

A. I did what counsel advised me to do.

• • •

(2024)

Q. When did you retain counsel in this matter?

A. I said this morning that I thought it was January or February.

Q. Of 1956?

A. Of 1956, yes, sir.

Q. And this telegram which has just been marked in evidence is April, 1956, correct?

A. Yes, sir.

Q. Now, did you after you retained counsel in connection with general letters that you sent to the distributor defendants in this case, including Paramount—did you consult with your counsel with respect to the communications

(2025)

you were sending out?

A. Yes, sir, I would read them to him before I would send them out.

Q. Therefore, do you disagree with Mr. Sawyer, that before you sent this telegram you did consult with your lawyer, and this was the result of a legal conference, wasn't it, which you followed, correct?

A. In all probability.

Q. Now, let me read you what you testified to and see if you didn't testify to this in 1956.

A. In 1956, sir?

Q. About 1956. You testified—

A. Oh, I am sorry, I thought you said I testified in 1956.

Q. No, you testified in 1957.

A. Yes, sir.

Q. And your recollection in 1957 was at least as good as it is today, wasn't it?

A. Well, I hope so.

(2026)

Q. Q. When was the first time that you communicated with an attorney—

I will leave his name out, unless Mr. Sawyer insists.

—in connection with this matter?

It wasn't Mr. Sawyer, that is the point.

Let me put it this way. We may have contacted—I mean retained counsel in February or March.

Well, now, that is a little different from what you just told me.

That is what I am saying.

This is 1956 now.

Yes, sir.

I think we had retained his office.

Well, now, did that attorney—

I am omitting his name again, and it was not Mr. Sawyer.

—dictate any of the wires or letters which you sent to Paramount on WAR AND PEACE?

No, sir, they did not.

Did you consult with them on any of the letters that you sent to Mr. Phillips on WAR AND PEACE, or any of the wires which you sent to him on WAR AND PEACE?

(2027)

I would say we did.

And that is the same you told us from the stand a few moments ago, is it not?

A. Yes, sir.

Mr. Sawyer: May I see that wire?
That is not addressed to Mr. Phillips.

Mr. Nizer: I would like to proceed, Your Honor.

By Mr. Nizer:

Q. Incidentally, did you on your expense vouchers ever make the notation, "I am going to the lawyer's office with respect to letters I am going to send to the distributors"?

A. I don't think there would be room enough on there to put such a statement, sir.

Q. I don't mean all of it. Did you say in substance, "Visited lawyers, letters to distributors"?

A. I may have.

Q. You not only may have, you did, didn't you, Mr. Wren?

A. I don't know, sir, unless I would see which one you were referring to. If I did I will readily admit it. I would like to see the document that says that.

• • •

(2028)

Q. I show you this item. We will leave out the lawyer's name again.

A. Right, sir.

May I see the original, please? I have trouble with these things. They are too gray.

Mr. Nizer: Will you please produce the original of September 21, '56? Your client would like to have it.

Mr. Steinberg: I have the original, sir, but I don't know if that is the same one. I don't see any notation.

Mr. Nizer: 7/21. I said September. July 1st, my fault.

By Mr. Nizer:

Q. Now, I am leaving out the name of the lawyer. "To so and

(2029)

so's office, re: letters to film companies." Do you see that? You charged a taxi to go to the lawyers in July. Does that bring it back to your mind, sir?

A. Yes, sir, yes, sir.

Q. All right. And that goes not only for the Paramount Company, but the various defendant distributors who received letters from you or Mr. Sley and the Viking Company after you retained counsel, those letters were the result of consultation with the counsel even though they dealt with ordinary business arrangements and dates, and so on, is that right?

A. I would say yes.

Q. Well, in answer to this telegram, which is Defendants' Exhibit 29, to refresh your mind so that you will not be confused about it, that is the one in which you say at 4:35:

"If you let me see the picture—I can't make a bid without screening, but can I make a conditional offer?"

Do you remember that one?

A. Yes, sir.

Q. Now, you got an answer to that telegram, did you not?

A. Yes, sir.

• • •

(2030)

Q. Now, your counsel offered this letter in evidence. Let me read from it and ask you some questions.

Paramount Pictures Corporation on April 23 replied as follows to your telegram:

"Dear Mr. Wren:

"Your telegram dated April 12, 1956, sent to our Mr. Ulrik Smith, has been referred to me for attention and reply. Your telegram relates to our picture WAR AND PEACE, for which we have requested offers for

the special engagement in Philadelphia, beginning September 13, 1956.

(2031)

"You state that until such time as you are afforded the opportunity to screen the picture, the management of the Viking Theatre is unable to submit a firm offer for a license to exhibit this picture."

Now, it is the next paragraph I want to ask you about:

"You request that you be permitted to submit an offer, with the understanding that after screening WAR AND PEACE, if the management of the Viking Theatre decided that the motion picture is not of the caliber anticipated, you may withdraw the offer without prejudice. I regret exceedingly that this request of yours can not be granted."

Now, I stop there for a minute—I will read on—and ask you this: You told us before that at the time you sent the telegram originally, if they would have said, "Can't deal with you, you are too late," you would have had no grievance, correct?

A. Yes, sir.

Q. And now this letter accomplishes the same thing. "We can not grant you this conditional offer." So you have no grievance at this point, have you? It is the same picture.

A. No, sir.

Q. Now let's go on.

(2032)

A. Pardon me. Unless I find that somebody else was afforded the screening, which I don't know at this point.

Q. Don't you know?

A. I say which I don't know at this point.

Q. Well, you found out later no one was afforded a screening?

A. Right, sir.

Q. Is that true? So you have no grievance on that account?

A. Yes, sir.

Q. As a matter of fact, the very next sentence told it to you at this point. Listen to it:

> "You are being treated on an equal footing with every other exhibitor whom we solicited to make an offer. No exhibitor has seen the picture, and no print is available in the United States. We expect that a print will be available sometime in July. Our top executives who found it necessary to see the picture were obliged to fly to Rome to see it. They believe it will be one of the greatest picture of all time."

So you were advised that no one could see it in the United States, that even the Paramount president who wanted to see this great production had to fly to Rome to see it, there weren't prints around at that time, correct?

(2033)

A. Yes, sir.

Q. You had no reason to challenge that fact, did you?

A. No, sir.

Q. Now, this is April 23rd. You remember you were supposed to put in a bid by April 12th, 5 o'clock, right?

A. This is eleven days after I was supposed to put in the bid.

Q. That's right.

A. Yes.

Q. And listen to what they say to you even then:

> "If you desire to bid, you may do so unconditionally. Other exhibitors are asked to do the same. If you do not see fit to do so, that is your privilege. There is no competitive disadvantage to you in the way we are offering this picture, since all exhibitors are treated alike."

So even on April 23rd the door was still open to you to put in a bid if you wanted to under these circumstances, right?

A. That is what he indicates, yes, sir.

Q. Now, you received this letter that I have just read, which is P-165 in evidence, since it is dated April 23rd I will assume on April 24, 1956, is that right?

A. I would imagine so, yes.

(2034)

Q. Did you submit a bid in the next few days, the next week?

A. I think first we sent them a telegram saying that we were sending a bid.

Q. And how long after April 24th, when you got this letter, did you send that telegram?

A. That I don't know, sir. I would have to see the wire.

Q. If I told you that it was May 2 or 3—would that be right?

Mr. Nizer: Do we agree on the date, Mr. Steinberg?

Mr. Steinberg: May 2nd.

Mr. Nizer: May 2nd.

By Mr. Nizer:

Q. All right. So you wait from April 24 to May 2 and then you advised them you are going to submit a bid, is that right?

A. If that is what the wire says.

Q. Well, you know, Mr. Wren, I don't want to be technical with you, but you have been testifying from recollection for several days for Mr. Sawyer and you never said "if," you told him the facts. Now I am asking for similar facts. What do you mean "if"? Don't you—

A. May I see the telegram?

Q. Have you no recollection without looking at it?

(2035)

A. I don't know what the telegram is on May 2nd. There may have been one before this, sir.

Q. Well, when you testified, you knew just what you had done in this case, didn't you, when you testified on direct examination?

A. Did I say all of this at any time before this, sir?

Mr. Sawyer: Mr. Nizer, I was handing him documents all the way along so he could follow it. It would be impossible, you know it would be impossible for the witness—

Do you want him to see it? Will you show it to him or may I?

By Mr. Nizer:

Q. Is this the telegram you mean? The date has been agreed to. May 2nd I accept. It was May 2nd, right?

A. Right, sir.

Q. All right, we have agreed on the date.

Now, on May 3rd you then submitted a bid of $45,000 guarantee, you testified, with 90/10 over a house expense and advertising to be paid 90 per cent by the distributor on this production, is that right?

A. That sounds right, yes, sir.

Q. And you testified in this courtroom, when Mr. Sawyer asked you, that this bid was rejected by Paramount because

(2036)

it arrived too late.

A. Yes, sir.

Q. Did Paramount give you other reasons why this bid was rejected?

A. Well, they may have, sir.

Q. Well, let me see if I can refresh your recollection so that you will have a full recollection of what they may have done and what they did do.

Did you receive a letter from Paramount, the very letter you referred to—didn't you testify that Mr. Phillips, the vice-president and general counsel of Paramount, sent you a letter?

A. I did.

Q. You so testified?

A. Yes, sir.

Q. Now, didn't he tell you more reasons than you testified to as to why your bid was rejected?

A. I said that the bid—according to Mr. Phillips the bid arrived too late.

Q. All right, let's see if I can refresh your recollection. Did Mr. Phillips advise you as follows:

> As you know, the Request for Offer on this picture was sent out on April 5 last and the due date fixed therein for the submission and receipt of offers

(2037)

> was 5 P.M. on April 12, more than three weeks ago. In view of the considerable time which had elapsed since the deadline, we are of the opinion that your request to have us extend the time for the submission of bids to May 7th was most unreasonable. Frankly, we feel that you should not ask us to mold or conform our method of doing business to suit the whims and caprices of each individual exhibitor.
>
> In your wire of April 12 last to Ulrik Smith—that is the wire that was sent at 4:35 and didn't get there; that is the one, so you will know what we are talking about—our Philadelphia Branch Manager, you advised that since you had not had an opportunity to see the picture, you were unable to submit a firm offer. You inquired if you might bid conditionally for it, that is,

submit an offer with the understanding that if, following a screening, the picture should not measure up to your expectations, then you might withdraw your offer without prejudice. Although no other exhibitor had seen the picture and your position was no different from that of your competitors, no other exhibitor made a request of this nature or sought such special treatment. In our letter of April 23rd—that is the one you have just identified, isn't it,

(2038)

that you received—we advised that the request could not be granted, that all exhibitors were being treated alike and that you were being placed on an equal footing with each and every other exhibitor.

Now, it is the next paragraph that for the present I will skip, and the one on top of the next page, Mr. Sawyer.

Mr. Sawyer: And the next one.

Mr. Nizer: I will even skip the next, at your suggestion.

Mr. Sawyer: And at the Judge's suggestion.

By Mr. Nizer:

Q. Now, as to the merits of your offer for WAR AND PEACE, which offer was submitted by me to our sales executive whose function it is to pass upon all offers received.

I will stop there to ask you a question.

The practice in these companies is to have experts who are in the bidding department who take all the different bids and use their expert knowledge to say which is the best one? That is the department he is referring to, is that right?

A. I would assume so, yes, sir.

Q. Now, talking about the man he submitted it to, the expert

(2039)

in his own organization:

> He informed me that your offer for the picture, even if it had been received in time, which, of course, is not the case, would not have been accepted for the reason that your theatre, in our considered business judgment, is not the most suitable theatre for the exhibition of a picture which we have every reason to believe will be one of the outstanding pictures of all time; nor would it have been the best offer. We might add, that your guarantee for the picture was of no real significance. The Viking Theatre, by reason of its size, has small and limited grossing potential and does not possess the grossing possibilities of the much larger theatre in which the picture will be exhibited and the guarantee would not make up for this difference in seating capacity and grossing potential.
>
> We wish, however, to take this opportunity to express our thanks for your interest in WAR AND PEACE.

Therefore, in addition to telling you that you were late, Paramount Company also gave you several other reasons why your bid was rejected; they at least set them forth to you, didn't they?

(2040)

A. Right, sir.

Q. Did you send a letter or any communication to Paramount saying, "I don't agree with your reasons"?

A. As I understand it,—

Q. No, no.

A. —Paramount's letter of solicitation, they told me mine was one of the theatres that was adequate.

Q. Will you please answer my question.

A. Did I reply to this?

Q. That is my question, that is right.

A. I believe we did.
Q. You replied to that?
A. I believe we did.
Q. When?
A. Within a couple of days, sir.

Mr. Nizer: May I ask for a copy of any letter that was sent?

By Mr. Nizer:

Q. Now, I show you this letter which was sent by registered mail and ask you if this is the letter that you sent, threatening a lawsuit.
A. Yes, sir.
Q. Did you consult with your lawyers about this letter?
A. Yes, sir.

(2041)

Q. And did they draft it?
A. This one? Yes, sir.
Q. They drafted the letter for you?
A. Yes, sir.
Q. So this was a lawyer's letter, right?

Mr. Nizer: I offer this in evidence.

(Letter dated May 21, 1956, to Louis Phillips, Esq. from Jay Wren, was marked Exhibit D-30 (Paramount) for identification.)

Mr. Nizer: Mr. Wren's letter sent by registered mail, return receipt requested, May 21:

"Dear Mr. Phillips:

"We don't think it is whimsical or capricious to want to see a picture before we bid on it, so that we know what we are bidding for.

"If we thought you meant it, we would be very happy to be placed on an equal footing with at least two of your other exhibitors, Mr. Goldman and Mr. Fabian. Ultimately, I think you will be right, you will have to place us on the same footing as these favored exhibitors.

"The third paragraph on the second page of your letter is simply one more indication of the fact that you do not and will not treat us fairly until you are compelled to do so.

(2042)

"Under the circumstances, we feel we have no alternative but to discuss with our attorneys the advisability of suit against your company and the other distributors who have been conspiring with favored exhibitors in violation of the antitrust laws, to our damage.

"Very truly yours."

By Mr. Nizer:

Q. And when you wrote in this letter, "Under the circumstances, we feel we have no alternative but to discuss with our attorneys . . ." you were referring to the necessity of doing that in the future, weren't you?

A. I don't understand that, sir.

Q. When you wrote in this letter, "Under the circumstances, we feel we have no alternative but to discuss with our attorneys the advisability of suit . . ."

A. Yes, sir.

Q. You were telling them that you were going to go to your lawyers in the future to discuss this possibility?

A. Yes, sir.

Q. But all the time you knew that for months prior to this time every communication that was sent was subject to the advice of your lawyers concerning this very lawsuit that was being planned, isn't that right?

(2043)

A. Why, yes, sir. That is the reason you engage counsel.

Q. Yes. And the theatre—withdrawn.

So that when on April 12 you sent your telegram at 4:35 and Paramount had said, "We will have nothing to do with you on this picture," you have said you have no grievance, you have told us that, correct?

A. Yes, sir.

Q. And when on April 23rd, if that is the right date, whenever that letter came and they said, "We can not give you a conditional offer, we regret to tell you we can't accept that," if they had stopped there you had no grievance, correct?

A. Yes, sir.

Q. But because after that they keep the door open to you and they tell you the reasons why they reject the final bid that you do make, you threaten that they have violated the law, correct?

A. Yes, sir, because they contradict themselves.

Q. And the theatre that played WAR AND PEACE was the Stanley Theatre?

A. Yes, sir.

Q. How many seats has the Stanley Theatre?

A. At that time?

Q. Yes.

(2044)

A. 2900-and-some-odd seats.

Q. That would be almost three times the size of your theatre?

A. That's right, sir.

Q. You testified about the picture COURT JESTER. That is a Paramount picture starring Danny Kaye.

A. I didn't get the title, sir.

Q. COURT JESTER.

A. Yes, sir.

Q. That is a picture starring Danny Kaye, isn't it?

A. Yes, sir.

Q. You were invited to make a bid for that picture?

A. Yes, sir.

Q. And you were sent the regular printed form so that you could fill out the form as to what your bid was, correct?

A. Do you mean the request for offer?

Q. Yes.

A. Yes, sir.

Q. And you testified that your bid was rejected?

A. Yes, sir.

Q. And you stated your grievance, as I understand it, that the next thing you knew after you put in your bid was that the COURT JESTER had been awarded to the Goldman Theatre? Is that the nature of your grievance here, as you testified?

(2044a)

A. I was probably advised with the regular letter saying that the offer had been rejectd and the picture awarded to, similar to the form.

(2045)

Q. Well, let's see what you testified to here in this court. When Mr. Sawyer asked you about this grievance, this is what you testified to. Listen to the questions and answers.

"Q. Now, was that bid rejected, Mr. Wren," said Mr. Sawyer.

You said, Yes, sir.

"Q. Subsequent to its rejection did anyone from Paramount approach you with respect to negotiating for the picture?

"A. No, sir.

"Q. What was the next thing you knew with regard to the picture THE COURT JESTER?

"A. The picture had been awarded to William Goldman Theatre."

Did you give that testimony?

A. Yes, sir.

Q. So that you now state again, do you, that your grievance is that your bid is rejected and the next thing you hear is that it is playing, it is going to be at the William Goldman Theatres?

A. I said I was advised that it was rejected.

Q. And after that the next thing you knew it was playing or

(2046)

going to play at the William Goldman Theatres?

A. Yes, sir.

Q. Now, in December, 1955, did you know that other exhibitors had made bids for THE COURT JESTER?

A. If I got a rejection letter, yes sir; it would be indicated on there.

Q. And before the picture was awarded to the Goldman Theatres, were you invited to negotiate further for THE COURT JESTER?

A. I don't believe so, sir.

Q. Didn't you receive a letter from Ulrik Smith, the Branch Manager of Paramount, advising you that Paramount would negotiate further with you in that matter after the rejection?

A. There, again, it is the same as this morning, sir.

You mean did I go over and ring the doorbell?

I did not, sir.

It says, "We will negotiate with you."

Q. You are jumping ahead of me, Mr. Wren.

My first question is: Paramount, in the very same letter in which it rejected your bid, and rejected the bid of every other exhibitor who made a bid on the ground that it is unsatisfactory—correct so far?

A. I would assume, yes.

Q. In that very same letter Paramount said to you, and everyone

(2047)

else: We will now negotiate with you further. In other words, no bids. We want to sit down and talk with you if you have any interest in this picture.

Is that what it means?

A. Well, that is your interpretation, it is not mine, sir. It says, "We will negotiate with you further."

How? Competitively negotiate? How are they going to negotiate with me?

Q. The language of the December 28, 1955 letter is:

"This is to advise you—"

Mr. Nizer: I don't know whether this has been offered in evidence. May I offer it in evidence, please?

Mr. Sawyer: We have that, yes. It is not in evidence.

Mr. Nizer: I offer this in evidence.

(Letter dated December 28, 1955, from Paramount Film Distributing Corporation and signed Ulrik F. Smith was marked Exhibit D-31 (Paramount) for identification.)

By Mr. Nizer:

Q. This is addressed to everybody who made the bid, isn't it?

A. I would believe, so, yes.

Q. "Gentlemen:

"This is to advise you that we received on

(2048)

the motion picture THE COURT JESTER"—that is with Danny Kaye—"as offered in our letter of Decem-

ber 1, 1955, offers from the following," and they advise you from whom the bids came; is that right?

A. Yes.

Q. Arcadia, Viking, Stanley or Mastbaum, right in the letter?

A. Yes, sir.

Q. So Paramount very openly tells you, "We have received bids from the Arcadia," which is not operated by either Goldman or Stanley Warner. That is the Shapiro theatre, isn't it?

Mr. Sawyer: Offers I believe they say, not bids.

Mr. Nizer: Do you make a distinction between the two?

Mr. Sawyer. Yes. Go ahead.

By Mr. Nizer:

Q. I will ask you instead of Mr. Sawyer. Do you make a distinction between "offer" and "bid?"

A. I would like to ask you. You represent the distributors.

Q. Well, now, please answer that. I am glad to have a smile but let's get along with the facts.

Do you make a distinction between an offer and

(2049)

a bid in a motion picture matter?

A. I think the film companies do as well.

Q. No. Well, then you do?

A. Yes, sir.

Q. And what is the difference between the two, as you understand it?

A. I don't understand it.

Q. You don't understand it. But you make the distinction?

A. Yes.

Q. I see. All right, we will go on.

And they tell you that: We have received, these different offers, I will call them, from Arcadia, Viking, Stanley or Mastbaum, and they don't regard them as satisfactory. "Therefore, we will negotiate further with each of you."

Now, when you got this letter in December, 1955, concerning the picture THE COURT JESTER, did you understand this to mean: We are ready to sit down with you and to negotiate? The first bid or offer isn't satisfactory but let's get together and see if we can make a deal and we will do that with everyone.

Did you understand that to mean that?

A. No, sir, I did not. I assumed they were going to contact me, which I don't believe they did.

(2050)

Q. In other words, your grievance comes down to this: That when a motion picture company says, "We will negotiate further with you," that the duty is upon them to come to your theatre and try to interest you. But if you stay home and they don't come to you, then you have got a grievance against them?

A. No, I haven't said that all, sir.

Q. Let me anticipate what may be in your mind. Suppose even the Branch Manager had visited the Arcadia Theatre, he knows the Shapiros, he has seen you at lunch and breakfast and dinner with them so he goes there but he doesn't come to your theatre, Mr. Wren. Would you say that that was a grievance that you had, the salesman goes to one fellow but he doesn't come to you, but he invites you all to deal with him? Is that a grievance?

A. At Mr. Smith's request I have gone over and had lunch with him at his favorite eating spot many times to discuss a picture. I was invited over.

Q. That is very uninteresting. Now, please answer my question.

Is your grievance in this matter that the Branch Manager didn't come to your office, and let's assume that he

went to some other competitor's office, let's even assume that, would that be a grievance on your part that he didn't visit your theatre but he was waiting for you to visit

(2051)

him when you were in the exchange?

A. No.

Q. That wouldn't be a grievance, would it?

A. No, sir. I would like him to call me and tell me, "Would you come over and see me. I am ready to negotiate."

Q. That is pretty trifling and picayune, frankly, as man to man.

A. No. Is your door open to me all the time in New York? You have appointments to keep. I can't stand around any more than he can stand around my theatre waiting to see me.

Q. It is the inconvenience that you suffer from a delay in meeting the appointment so you have brought this case, and here we all of us are, and the Court and jury, because you don't want to sit around.

A. I want the same fair and equal treatment referred to some in these letters.

(2052)

Q. Mr. Wren, I am going to assume for this purpose, though I don't say it is so—I am going to assume for this purpose that you weren't accorded equal treatment in this matter, that the branch manager went over to the Trans-Lux or the Stanley Warner, or a defendant exhibitor, or a non-defendant exhibitor, but for some reason he didn't come to see you. Maybe he doesn't like the way you have been dealing with him, so he won't visit you. If you want to deal with him, he says: Let him come to me. Let us assume that, that you don't get equal treatment. Is that your grievance then? Is that a grievance?

A. Well, I think it would be a grievance, certainly.

Q. You do?

A. Yes.

Q. Isn't it a fact that during this very period you were in the Paramount office?

A. I may have been. I was in the Paramount office quite a deal, sir—quite a lot, I mean.

Q. And, therefore, all you would have had to do, being right in the office, is to say to Mr. Ulrik Smith: You invited me to negotiate; what do you want for the picture? Did you ever do that?

A. I have on occasion, I indicated I have.

Q. On the COURT JESTER did you do that?

(2053)

A. I don't recall, sir.

Q. What?

A. I don't recall.

Q. So you still complain he didn't visit you, even though you were right in his office and talked with him about various things, and you don't even recall asking him about this picture, but you are asserting a claim in this court, aren't you?

A. All I am saying, Mr. Nizer, repeatedly, if I am accorded the same treatment as everybody else I have no complaint. We have not been accorded the same fair and equal treatment they always refer to.

Q. Mr. Wren, you have said that a number of times, and so I will ask you once more.

A. It is from your letter, sir.

Q. I will ask you once more about being accorded the same treatment. Is it your conception that a man who has a property in which he has several million dollars, and has certain views about the buyer—let us say for a moment, without meaning to reflect on you, that he has disadvantageous views about you, let us say that they are jaundiced views about you and Mr. Sley, and your conduct in paying bills. Let us assume that for a minute. And therefore he doesn't

treat you the same as the next man with respect to coming to your door.

(2054)

He says: I have invited him to negotiate, but I don't care too much for this fellow.

Let us suppose it is someone else, so you won't feel sensitive about it. Suppose that the Paramount manager doesn't like Mr. Shapiro of the Arcadia Theatre, he takes a dislike to him. He says he is willing to visit Mr. Wren, he is a wonderful chap. But so far as Shapiro is concerned, if he wants to buy this picture let him come to see me.

Do you think that Mr. Shapiro would then have a grievance in a business relationship? Do you think this gives rise to grievances and lawsuits? Do you?

A. Does dislike mean that the man does not meet his obligations? What obligations do you refer to between the Viking and Paramount?

Q. Well, I will tell you. On LUCY GALLANT.

A. No, just up to this point now.

Q. No, no, please. You asked me a question.

A. All right, LUCY GALLANT, fine.

Q. That is not your privilege, but I will accommodate you.

A. Thank you.

On LUCY GALLANT, a Paramount picture—

A. Yes, sir.

Q. —you put a 90/10 deal with such heavy advertising expenses that Paramount lost $3000 for the privilege of playing

(2055)

that picture at your theater, and you made money, is that a fact?

A. Paramount accepted the deal, sir.

Q. Yes, and you held held them to the contract, didn't you?

A. Yes, sir.

Q. And they lost money while you made a profit?

A. Yes, sir.

Q. Don't you think that conditions a company about how to deal with a man to some extent?

A. Why, sir? They lost money playing other theaters.

Q. And therefore it is their privilege to continue to lose it with you.

A. Why not, sir? They continue to do business with the men where they lost money.

Q. Well, they did do business with you, they invited you to negotiate.

A. Well, you are telling me that maybe the man says, he don't pay his bills.

And I am actually asking you what bills the Viking did not pay to Paramount at this particular time on the COURT JESTER. So that you won't have any ideas about this man not liking Mr. Wren or Mr. Sley or the Viking Theatre.

I want to know what his problem was, why did he dislike us at this time, and you tell me it is because he

(2056)

played a picture and lost money, and it is my fault, after he accepted the deal.

Q. You hadn't yet played the COURT JESTER, so you couldn't owe a bill on that, correct?

A. No, sir.

Q. All right.

A. So I wanted to know what I owed before that.

Q. Mr. Wren, oh, yes, I will tell you. Do you think that the motion picture companies heard around the street that there were various suits that had to be brought against the Viking Theatre because they hadn't been paying their bills and put in all sort of defenses in these litigations?

A. At this time?

Q. Don't you think that was—

A. At this time, sir?

Q. At any time that it happened.

A. At this time, sir? December you are talking about now. At this time?

Q. Do you mean you failed to pay your bill a little later in some cases?

A. Oh, no; now you just mentioned there that at this time everybody knew around the street that the Viking was not paying its bills, and I would like to determine what bills the Viking had not paid in December.

(2057)

Q. Well, yes, at this time I am informed by my colleagues—at this very time you had not paid the Universal bill and there was a suit pending at the time.

Mr. Adams: No.

By Mr. Nizer:

Q. (continuing) It was just a claim at the time going around. Now, these kind of things get around.

A. Now, just a moment, this is December, 1955—

Q. That is right.

A. —and Universal was bringing a claim against us. We didn't play Universal product until December 23, 1955, sir. So what claim does Mr. Adams refer to?

Q. Well, I am given the information that you had a dispute with advertising on the SECOND GREATEST SEX.

A. That is not the truth, sir.

Q. Now, Mr. Wren, just calm yourself down, please, sir.

A. I will, if you will, sir.

Q. You know in all business relationships of every industry there are some difficulties between buyer and seller.

A. Yes, sir.

Q. And if every time there was some claim of difficulty, and I will assume there were some, lawsuits were brought,

we would have to build a thousand more courtrooms, wouldn't we?

A. Yes, sir.

• • •

(2058)

Q. In July of 1955 hadn't you failed to pay United Artists on the picture NOT AS A STRANGER? We have been all over that. Weren't you having trouble on that last week?

A. July, 1955, sir, was only the first—

(2059)

Q. September, 1955.

A. In September—

Q. Just before this date that we are talking about. Now, just calm down.

A. I am going to calm down.

In September of 1955, I think it was the first week that we were notified that United Artists wanted to take the picture off at the end of the eleventh week.

Mr. Tunick is in the courtroom. Ask him what we owed him.

You say we were not paying our bills. I want to know what we owed Mr. Tunick and what was the subject of a discussion.

Q. For September, October, and November of 1955 you did not pay—

A. Pardon me, sir.

Q. No, no, no, Mr. Wren—

The Court: Let him finish the question.

Mr. Nizer: Please let me put the question so you can answer.

The Witness: Yes.

By Mr. Nizer:

Q. In September, October, and November, 1955 you had not paid your bills to United Artists on NOT AS A STRANGER that

(2060)

were then outstanding and due and you were getting letters demanding payment, weren't you, over that?

A. Now, Mr.—

Q. Yes or no to that. Tell me if I am wrong.

A No.

Q. No. What part of a bill did you owe in December, 1955, to United Artists, any?

A. Yes, sir.

Q. And you hadn't paid it?

A. There was a discussion, as Mr. Tunick well knows—

Q. And there was a discussion which resulted in your not paying it for six months and then they had to wipe out the whole thousand dollars except for the advertising, correct?

A. Yes, sir.

Q. And you not only didn't pay for that, but you refused to pay for DESERT SANDS, a United Artists picture, which followed it, and they had to reduce that by one-third of the total, right?

A. Because of their delay on answering a letter with reference to an adjustment. No one said you pay it and we will adjust it.

Q. And that delay took over six months?

A. It was just as long a delay as Mr. Phillips answering our letter.

(2061)

Q. And you required United Artists either to take the adjustment or bring suit?

A. I did not, and there is no indication of that anywhere, sir.

I would like to see where we told them, either give us an adjustment or bring suit.

Q. Well, you didn't pay it, did you?

A. Well, we certainly did pay it.

Q. In six months?

A. After the adjustment was put through by the New York office, we paid the bill as indicated, and if they had said no, the bill would have still be paid.

And, Mr. Nizer: further, you have mentioned September here—

Q. No, no, no, Mr. Wren, will ask you to subside.

A. Thank you. I will if you will.

Q. And I will continue with questions and answers.

In April, going back long before July, on HIT THE DECK, on THE PRODIGAL in June, 1955, weren't there bills still outstanding to Metro because of a dispute that you had with them, again on advertising?

A. And didn't Metro owe me money?

Q. No. Asnwer my question, please.

A. Yes, sir.

(2062)

Q. Yes, sir.

A. With an explanation.

Q. No.

The Court: Let him explain.

Mr. Nizer: Yes, sir.

The Witness: Because Metro also owed the Viking Theatre some money, and unfortunately everybody's credit is good but the Viking Theatre's, but the Viking Theatre's credit is not good with anybody.

We wait as high as ten and twelve weeks, and we lay out the money for advertising, and at Metro's convenience they mail you a check, five, six, eight, ten

weeks. Now, they don't send you any interest on that money.

And it is always with Metro. We send you the check later. You just send us the tear sheets and the invoice, meantime send them the film rental. We need the money. But the Viking never needs the money. It is only the film companies.

And their credit with us has to be unlimited, but our credit, it isn't worth a tinker's darn.

By Mr. Nizer:

Q. Well, actually the dispute with Metro wasn't due to a mere delay in sending a payment one way or the other, it was due to the fact that you were having a dispute with Metro concerning the propriety of certain advertising charges which

(2063)

they challenged—

A. They—

Q. Now, just listen.

A. Pardon me.

Q. You are running off to make addresses, Mr. Wren, and I would appreciate from now on if you would answer my questions.

Your dispute in holding up the money for the Metro bills in April, and May, and in June was that there was a controversy concerning the advertising clause, which I won't go into now, that was the controversy, and in the meantime you didn't want to pay the bill, is that right?

A. We paid the bill all except the amount in discussion for advertising.

Q. And there was a suit on that which is still pending, isn't it?

A. Oh, that was a long time afterwards, sir.

Q. On a similar clause, there had to be a suit.

A. Yes, sir.

Q. Now, incidentally—

A. And Metro brought the suit, sir.

Now, Mr. Wren, please. Your failure to pay in any one of these cases wasn't due, I am happy to say, to any lack of financial resources, was it, on the part of the Viking?

A. Viking Theatre Corporation?

(2064)

Q. Yes.

A. Yes, sir, it certainly was.

Q. You mean that Mr. Sley had difficulty in meeting his bills because of any financial difficulty of Mr. Sley?

A. You didn't mention Mr. Harry Sley, sir, you mentioned Viking Theatre Corporation.

Q. Doesn't he own this company?

A. Yes, sir.

Q. And doesn't he also own the company which runs this theater, which is a separate company? Doesn't he lease his own theater? Doesn't he own the property and lease it to his own company?

A. That you will have to discuss with him, sir.

Q. You don't know that, do you?

And don't you know that he charges rent to his own company and pays the rent to himself in the form of another corporation?

Wait a minute. Do you know that? is my question. Just answer my question, please.

A. No, sir, I do not. I don't make up the—

Q. You don't even know that being there all these years?

A. I don't make out rent checks, sir.

Q. And do you know that the rent which is charged by Mr. Sley's corporation which owns the property is put on to this

(2065)

bill of $4970.19, which is charged to the company? Do you know that? Or don't you?

A. Yes, sir, I know that there is a charge for rent on there.

Q. And do you know that in the income tax report where you set forth the expenses of this corporation the figures are much lower by a thousand dollars a week on the amount of the actual expense that is charged to the companies—

A. I—

Q. Do you know that or don't you?

A. I do not, sir.

Q. Well, as vice president and general manager of this company, you making the deals in which you set forth to the penny $4970.19, your expense, have you ever checked whether that expense is correct?

A. Correction, sir. I was not vice president in 1955 and 1956.

Q. All right, you were general manager.

A. As general manager—

Q. Let us not quibble.

A. —I took the figures as I—

Q. Listen to my question.

A. I am sorry, sir.

Q. And then answer it. As general manager, as the man who

(2066)

buys and represents that the expense is $4970.19, have you ever taken the trouble to find out whether that is accurate?

A. I was given the figures to put on there by the auditing department, sir, and I assumed they were accurate. I had a bid to get in.

Q. Who was the auditing department?

A. At that time Mr. Edward London.

Q. And does Mr. Sley supervise that or you?

A. This is in the Widener Building, sir, it is away from the Viking Theatre, it is an auditing—

Q. Does Mr. Sley supervise these expenses or you?

A. Mr. Sley hires the auditor, naturally, sir.

Q. And you are telling us that the reason you accepted these figures is that you simply relied on his auditor and on Mr. Sley; this is his concern, is that right?

A. As the Stanley Warner zone manager would.

Q. Please answer. Don't tell me about Stanley Warner. I am asking about you.

A. Yes, sir.

Q. Are you telling me that you blindly accepted these figures as accurate because you never took the trouble to check, but relied on the accounting department and Mr. Sley?

A. Why, naturally, sir.

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(2067)

Q. Did you ever discuss the accuracy of the expenses that you were putting into these contracts with Mr. Sley? Did you ever discuss it with him?

A. No, sir.

(2068)

Q. Did you ever try to find out from the auditor of the company whether these figures were correct or not?

A. I certainly did not, sir.

Q. Did these figures vary so that at one time you put forward $5,333.14 with another company under other circumstances?

A. Oh, those figures varied, as I have indicated—

Q. Listen to my question and just answer it, did you—

A. Yes, sir, with an explanation.

Q. Now, first tell me whether you varied it.

A. I said yes.

Q. (Continuing) With a company.

A. I said yes.

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The Witness: I will tell you why, sir.

The bids basically are on figures set up which are submitted to the company as a basis on a deal, on a 90

(2069)

per cent deal. If I put in $8,500 and you get 90 per cent after, and you accept that, that is the way it is put in; house allowance, house expense, no matter how you want to slice it, it is part and parcel of bidding.

If I elect to put in $10,000 house expense and you accept the deal. It isn't a case of NOT AS A STRANGER.

We will come back to the same thing.

Mr. Nizer: I—

The Witness: Please let me finish, my explanation.

On the bottom of Stanley Kramer's contract, subject to audit. Now, don't ask me to go and audit the books for Stanley Kramer. It was his privilege. If he wanted to come in, if he was dissatisfied with this deal, your client, why didn't he express that dissatisfaction. Tell me, you are not going to get the picture until you convince me once and for all that every item you have set down here is exact.

He didn't say that. He said: I will take the deal.

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(2071)

FOURTEENTH DAY

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(2073)

By Mr. Nizer:

Q. The picture COURT JESTER is a Paramount Picture, is it not?

A. Yes, sir.

Q. And you testified to that picture on direct examination?

A. I believe I did.

Q. You were invited to bid for this picture and you made a bid, correct, sir?

A. I believe that is right.

Q. And your bid was rejected?

A. Yes, sir.

Q. And your grievance, if it be called that, about which you testified was that the next thing you knew the COURT JESTER had been awarded to the Goldman Theatre, is that right?

A. That is what I said, sir.

Q. The next thing you knew was not that the picture had been awarded to the Goldman Theatre, but that you had received a communication from Paramount telling you that all of the bids had been rejected and inviting you to negotiate; that is correct, isn't it?

A. I would like to see the rejection, sir. I am not sure what it is.

Q. This has already been marked for identification,

(2074)

and does it not refresh your recollection that you received advice of the rejection of the bids and that Paramount was offering to negotiate?

A. We will negotiate further with each of you. Right, sir.

Q. That is correct?

A. Yes.

Q. Thank you. And thereafter did you visit with Mr. Ulrik Smith of Paramount to discuss the picture?

A. I don't believe, sir.

Q. I beg your pardon?

A. I don't believe so, sir.

Q. The exhibit that I just showed you, the letter that you received from Paramount is dated December 28.

A. Right, sir.

Q. I show you your own expense voucher and ask you if that doesn't refresh your recollection that you did go to the Paramount office to negotiate.

A. I can't read this, sir.

May I see the original of this?

Mr. Steinberg: What is the date?

The Witness: 1/21/56.

Mr. Steinberg: 1/21?

(2075)

The Witness: Yes.

By Mr. Nizer:

Q. I call your attention to the item of your expense and ask you if you did not visit the Paramount projection room on January 19 or 20?

A. Viking to Paramount projection room. Yes.

Q. So that you were in the Paramount building and office on that day, were you not?

A. On January 20.

Q. Does that refresh your recollection that you spoke to Mr. Ulrik Smith on that occasion?

A. No, sir, it does not.

Q. It does not. Well, now, do you say then—

A. Pardon me?

Q. Do you say that according to your best recollection you did not ever speak to Mr. Ulrik Smith about the picture COURT JESTER after you were invited to negotiate?

A. Not to the best of my knowledge.

That would indicate that I screened the picture at Paramount that day.

Q. You were in their offices?

A. In their projection room.

Q. And you saw Mr. Ulrik Smith on that occasion?

(2076)

A. I don't know whether I did or not, sir.

Q. But were you eager to get this picture?

A. Sir, our indication of eagerness was expressed through our bid.

Q. Well, then, the answer is yes?

A. Yes.

Q. And you do not recall whether you ever spoke again to Mr. Smith, the Paramount manager, with respect to the COURT JESTER, a Danny Kaye picture, after you were invited to negotiate, is that your best recollection at the present time?

A. Yes, sir.

• • •

Q. Mr. Wren, between the period December 28, 1955, which is the very date of the rejection after the invitation to negotiate; is that right—December 28, is that correct?

Yes, the date on which you were invited to negotiate, the date of that letter is December 28, 1955.

A. Yes, sir.

(2077)

Q. Between that date and January 14, 1956, your expense vouchers are missing. Have you an explanation to make as to where they are?

A. None whatsoever. Our counsel took my expense vouchers out of my files.

Q. And this is the only period that is missing from those expense vouchers that you know of?

A. I didn't know they were missing until just now.

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(2078)

Q. The availability date of COURT JESTER was February 2, 1956. You had already been committed for two pictures for that availability date, had you not, sir?

A. February 2nd?

Q. Yes.

A. No, sir.

Q. Then you are telling us that you did not consider yourself committed to the two Universal pictures in the month of February—not a particular date—but that you were not committed to play the Universal pictures during the month of February, December, January—January, February and March, is that right?

A. I have testified that originally we were to play SECOND GREATEST SEX Thanksgiving. They subsequently changed it to Christmas.

I have also testified that we had told Mr. Dana we would not stop bidding because we had these four pictures under contract.

Q. Now what I ask is did you commit yourself when you licensed the Universal pictures, the four Universal pictures, to play them during the months of January, February and March?

A. Yes, sir.

(2079)

Q. And you had so committed yourself in what month, approximately? I don't mean the exact date.

A. I assume it was September.

Q. So that in September 1955, which is two months before this letter I just showed you, you felt that you were committed to play Universal pictures in the months of January, February and March 1956, is that correct?

A. Yes, sir, right, sir.

Q. Therefore, when you submitted your bid on COURT JESTER, you knew, did you not, that you already had pictures booked in for the February 1956 period? Did you know that or not, is all I asked.

A. I had no pictures booked at the Viking Theatre.

Q. Well, I am not using the word "booked" in a technical sense, in the sense that you had put in a date, but you

knew that you were obligated, committed, as you said a moment ago, to play a Universal picture during that month of February, did you not?

A. Yes, sir, but it is not indicated on the contract. They were open dates.

Q. No, no, I am not asking you where it was indicated, Mr. Wren. I haven't said otherwise.

A. Right, sir.

Q. Therefore, when you submitted your bid for the COURT

(2080)

JESTER, the Paramount picture with Danny Kaye, which was available February 1956—that was the date?

A. Right, sir.

Q. —you knew at that time that you already had an obligation, a commitment, without a specific date, but for the month of February 1956 with the Universal picture, right?

A. That's right. I could open it February 28 or 29, if there were 29 days in that month.

Q. You also knew that you had a commitment with Universal in March '56, didn't you?

A. Yes, sir, and the same applies.

Q. So that you couldn't have opened February 28 without violating your commitment on the second Universal picture in March, isn't that right?

A. That is not true. I could open March 30 and still have been in the month of March, sir.

Q. If the Universal picture that played in February held past February 2nd, or if it played thereafter into March, you would have had a conflict of dates in that event, is that right?

A. Not particularly so, sir, no. With THERE'S ALWAYS TOMORROW, the picture should have only played one week to begin with.

Q. Your bid on the Paramount picture the COURT JESTER was

(2081)

90-10 over house expense, wasn't it?

A. I don't remember, sir. I would like to see it, please.

Mr. Nizer: You have already offered it in evidence. It is P-18.

By Mr. Nizer:

Q. All right, look at the contract. Your bid was 90-10 over house expense, wasn't it?

A. Yes, sir.

Q. And without any guarantee?

A. Yes, sir.

Q. You have already testified, haven't you, that that kind of a bid is a very poor bid for Paramount, that is, for a motion picture distributor, have you not?

A. It is the same type of bid they accepted for LUCY GALLANT.

Q. Yes.

A. And they accepted a similar type bid from Mr. Goldman for DESPERATE HOURS.

Q. Now, I haven't asked you that, though I will be glad to go into it. But in order to save time, will you please answer my question? I didn't ask you what other poor bids may have been accepted.

A. Right, sir.

Q. I asked you, you testified that a 90-10 bid over house

(2082)

expense without guarantee is a poor bid from the distributors' viewpoint.

A. And as you indicated, depending on the length of run. If it is a long-run picture it is good for the distributor. If it is short running, it is not.

Q. Is it basically a bad deal for the distributor?

A. Again depending on the length of run.

Q. How long is the run that you propose there?

A. Minimum of two weeks with a possible hold-over to be mutually agreed upon.

Q. Now, is that kind of a deal basically a poor deal for the distributor, and haven't you so testified?

A. I would say it wasn't one of the better deals, right, sir.

Q. I read to you from page 1706 of the minutes of this trial:

"Mr. Wren, . . . my question to you is is it your position standing by itself that a 90-10 deal over house expenses, which means that you get all the expense of your operation, no guarantee for two weeks,"—I think that means guarantee for two weeks—"is a poor deal for the distributor? . . ."

"Haven't you so testified?"

"Basically, yes."

(2083)

Did you make that answer?

A. If that is what is there, I did, yes, sir.

Q. And at page 1694 of the minutes of this trial I asked you:

"Haven't you testified that a 90-10 deal for three weeks"—

That is two weeks, isn't it?

A. Yes, sir.

Q. So three weeks would be a little better.

". . . for three weeks over house expense is a bad deal for the distributor and a good deal for the theatre because he is sure of getting his money back?

"A. Oh, yes, yes, yes, definitely.

"Q. That is true?

"A. Sure.

"Q. You have so testified?

"A. Yes, sir.

"Q. And you will stand by that?

"A. Yes, sir."

Did you make those answers to those questions?

A. If that is what is there, yes, sir.

(2084)

Q. So that at the time that you submitted this bid to Paramount on the COURT JESTER you knew these facts which you have testified to just as well as you know them today, of course, didn't you?

A. Yes, and possibly so did other exhibitors because maybe—

Q. No, I didn't ask you about anyone else, Mr. Wren. Mr. Sawyer may, so please be patient.

A. Fine, sir.

Q. You have also told us that the prior performance of a picture at a particular theater, the same theater of the same company, same distributing company, is important in evaluating a better offer; haven't you told us that?

A. Yes, sir.

Q. Now, the prior performance that Paramount had at your theater before the COURT JESTER, the picture we are talking about, the Danny Kaye picture, was a picture called what?

A. LUCY GALLANT.

Q. LUCY GALLANT? And without taking too much time, that is the picture on which you have already told us that that was a disastrous experience for Paramount; they lost money while you made money on the picture. Do you recall that testimony?

A. I don't recall using the word "disastrous."

Q. No, you didn't. I am characterizing the testimony.

A. Right, sir.

Q. If you want to I will quote it exactly.

A. I would like to hear it, sir. I don't remember using the word "disastrous."

Q. I didn't say you used the word "disastrous." I asked this question on cross-examination. Let me make it clear.

You have testified that in the case of LUCY GALLANT Paramount lost money on that occasion while you made money on that occasion.

A. Yes, sir.

Q. A prior Paramount picture.

A. Right.

Q. I have, therefore, characterized that as disastrous. Wouldn't you say so? You play a picture and you lose money for the privilege of playing it. That is disastrous to a company, isn't it, that is trying to get money back?

A. I wouldn't know.

Q. You wouldn't know? Right.

So, therefore, the prior experience of Paramount at your theater with one of its own pictures had certainly been, let's say, not disastrous but not satisfactory. Shall we say that; is that all right?

A. Yes, sir.

Q. And the COURT JESTER was even a worse picture than the LUCY GALLANT picture of Paramount which had had such a bad

(2086)

experience because the COURT JESTER as you will see has a minimum of two weeks whereas LUCY GALLANT had three weeks; right?

A. This, by that—

Q. Pardon me?

A. This, by that yardstick, is a better deal, sir. They could get out in two weeks as opposed to the three weeks they were committed to play LUCY GALLANT, so this is better for Paramount.

Q. I thought you told us a moment ago, Mr. Wren, that if the run is longer, that's more advantageous to the distributor. Are you telling us that if it is shorter—

A. If the picture is grossing on a long run it is better for the distributor.

Q. But if it is losing money?

A. The sooner they get it out the better.

Q. So the sense in which this was better, according to you, was that since they would lose money at your theater they wouldn't have to lose for a third week; they could take their loss and run for two weeks; is that what you mean?

A. I didn't indicate at any time that they would lose money at my theater with this picture.

Q. Well, then, let me ask you, ordinarily is a minimum guarantee of two weeks, a 90/10 deal with the minimum

(2087)

guarantee of two weeks, a better deal than one with three weeks?

A. Two weeks as opposed to a three-week commitment?

Q. Which is better for the distributor?

A. Two weeks.

Q. Two weeks?

A. Because he can get out sooner if it is losing money.

Q. And if he is making money?

A. He can stay because it says the holdover is mutually agreed upon.

Q. And you have to agree to that before he can stay?

A. Certainly.

Q. Do you recall that when I was discussing the United Artists pictures there were out of the whole number three that you had testified about and I covered two and I said I would come back to the third, and that's why I want to direct your attention now to the United Artists picture AMBASSADOR'S DAUGHTER, a United Artists picture which is one of those three that you testified about. Now do you remember the forty that they distributed and released?

A. Yes, sir.

Q. Now, putting your mind on that so that you can follow me, United Artists invited you as well as other exhibitors in the territory to bid on the picture AMBASSADOR'S DAUGHTER, did it

(2088)

not?

A. Yes, sir.

Q. And you advised the United Artists that you didn't have any interest in the picture at all and, therefore, you wouldn't bid; isn't that so?

A. I am not certain, sir. Did I?

Q. Well, you have been testifying, this is one of the three pictures about which you have stated some kind of a complaint, and do you not know at this time as you sit here whether when you were invited to bid you communicated with United Artists and told them you weren't going to submit any bid?

A. I am not certain what I told United Artists, sir. It has been over a week ago, as I recall.

Q. You mean since you testified?

A. Yes, sir.

Q. So you have forgotten; you are not sure since last week? When was this picture AMBASSADOR'S DAUGHTER submitted to you; do you remember the year?

A. '56.

Q. 1956?

A. Yes.

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(2089)

Q. I show you this telegram and ask you if this is the telegram you sent about AMBASSADOR'S DAUGHTER.

A. Yes, sir.

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(Telegram dated May 14, 1956, from Jay Wren to United Artists Company, was marked Defendants' Exhibit 32 (United Artists) for identification.

Mr. Nizer: Your Honor, may I have permission, please, to read this?

Ladies and gentlemen, this is a telegram from Jay Wren, May 14, 1956, addressed to United Artists Company:

Re your competitive bid application of

(2090)

May 17, 1956, the Viking Theatre does not wish to submit an offer for a license to exhibit first run Philadelphia the motion picture AMBASSADOR'S DAUGHTER which you advise is available August 1, 1956. Please continue to afford the Viking Theatre this opportunity to submit offers on all of your future releases.

Kindest regards Jay Wren

By Mr. Nizer:

Q. So this refreshes your recollection that your position with respect to the invitation to bid on AMBASSADOR'S DAUGHTER was that you didn't wish to submit any bid at all; is that right?

A. Yes, sir, that's what that would indicate, yes, sir.

Q. And, incidentally, when you say "Please continue to afford the Viking Theatre," the word "continue" means that they had been sending you invitations whenever they had a picture?

A. Yes, sir.

Q. And that is true in other telegrams I read; you always used "Please continue"; they were inviting you?

Now, at the time that you sent this telegram, you had no grievance of any kind about this, did you?

A. At the time I sent the telegram?

(2091)

Q. That is right.

A. Evidently not, no, sir.

Q. You simply exercised your judgment and discretion and decided that you had no interest in this picture and that is your business, and you had a right to do it; isn't that so?

A. At that time, yes, sir.

Q. And after you sent this telegram to United Artists it nevertheless approached you and tried to negotiate with you to arouse an interest which you say you didn't have; isn't that what happened?

A. I believe that's right, yes, sir.

Q. And then as a result of his following you up and trying to get you to make some offer, you made an oral bid, didn't you, not in writing, but orally?

A. We negotiated.

Q. I didn't ask you that. I know; you just told me that.

My next question is, didn't you submit as a result of his following you up an oral bid?

A. Well, I assume if you want to call it a bid, yes, I submitted an offer orally.

Q. And then after you submitted your offer orally, let's call it an offer instead of a bid, they found it unsatisfactory and rejected it?

A. Yes, sir.

(2092)

Q. And that is what there is to this picture AMBASSADOR'S DAUGHTER; that's the history of it, is it not, fairly stated?

A. No, I think fairly stated it would be that the offer I did submit was better than the one that they accepted.

Q. And do you have any information at the time that you made this original rejection or when you submitted the oral offer, did you ever ask Mr. Tunick about what other offers were being made in negotiation?

A. No, sir.

Q. In the picture NOT AS A STRANGER of United Artists which you played, I just want to ask you several questions.

Mr. Wren, coming back for a moment to the United Artists picture AMBASSADOR'S DAUGHTER, when you testified at the behest of Mr. Sawyer concerning this matter you stated, did you not, or wasn't it the content of your testimony that your grievance there was that Mr. Goldman who ultimately won that picture negotiated for the picture, whereas you—

Mr. Sawyer: What page is that?

Mr. Nizer: 1146.

By Mr. Nizer:

Q. —whereas you submitted a bid; isn't that what your grievance was in your direct testimony?

A. Yes, sir.

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(2095)

Q. The picture NOT AS A STRANGER, a United Artists picture, played at your theatre over a July 4 week-end, did it not?

A. Yes, sir.

Q. And, of course, that is one of the most important holidays from the viewpoint of good business at any theatre, isn't it?

A. It is an important holiday, yes, sir.

Q. During that engagement you increased your admission prices at your theatre from $1.49 to $1.80?

A. Yes, sir.

Q. Now I turn to HELL'S ISLAND, another Paramount picture, which we have not yet covered, but which you gave some testimony about. I will be very brief with this.

(2096)

HELL'S ISLAND was a poor quality picture, according to your judgment, was it not?

A. Yes, sir.

Q. And you intended to play it as a double feature. If you got it you intended to play it as a double feature on the lower half of the bill, didn't you?

A. On a flat picture, yes, sir. I think we bid that picture flat. So, as a result, it wouldn't get top billing, that is indicated.

Q. And, therefore, so as to make it clear to the Court and jury, the lower half of the double feature bill is the worst picture on that bill, it is called the lower half—it doesn't mean it is shown first or second on the screen, but it is the lower half of the bill, meaning it is the lowest of the low, doesn't it, on a double feature?

A. Well, that is pretty strong. It could be side by side. It would not get top billing, meaning if it was side by side it wouldn't be on the left-hand side.

Q. But you testified, didn't you, that you were going to try to pair that up with FOX FIRE?

A. Yes, sir.

Q. And put FOX FIRE as the leading picture and put the Paramount picture, HELL'S ISLAND, as the lower half of the bill?

A. Right, sir.

(2097)

Q. And this poor picture which you were going to play double feature, when you didn't get it, the Mastbaum Theatre played it as a single feature, didn't it?

A. I believe they did, yes, sir.

Q. If you were a distributor you would prefer a single feature playing at a theatre than the lower half of a double bill, wouldn't you?

A. I believe it has been indicated that the distributor is interested in what comes back to him so he can pay his bills. In this instance he would have gotten more from the Viking than he got from the Mastbaum, no matter how it was played.

Mr. Nizer: I move to strike that out, Your Honor, his prediction as to what they would have gotten.

The Court: I will grant that motion.

Mr. Sawyer: Is it objectionable, Your Honor. It is not a conclusion, the witness states that is a fact.

The Court: Well, that is a conclusion, isn't it?

Mr. Sawyer: It is a conclusion, by all means, but he has been asked for a number of conclusions. I submit the question invited a conclusion. He said this would be bad for the distributor, wouldn't it?

(2098)

The Court: No, I do not think he did. He was asked a question as to whether it was not better for a distributor to have his picture exhibited as a single feature rather than the bottom half, or whatever it was, of a joint bill. And the witness said, well, we would have done better at the Viking with a double bill.

Now, that was not in response to the question in any way. It was a matter of judgment. How does he know whether he would have done better?

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(2099)

By Mr. Nizer:

Q. Did you know that from February, 1955, when you made your association with Sley's Viking Theatre, to November, 1956, which is the period of the suit that we are talking about, Paramount released 28 pictures which played first-run Philadelphia—you can take that subject to your checking with your list of the playoffs, the pictures that played, your opposition book, and so on. Will you accept that until you check it, please, subject to check, rather?

A. You say the period of the suit?

Q. From the period, not of the whole suit, but from the period you came to Sley, you see.

A. Yes, sir, right, sir.

Q. From February, 1955, to November, 1956, Paramount

(2100)

released for first-run showing and did show in Philadelphia first-run 28 Paramount pictures. Do you accept that subject to your check? Does that sound correct to you?

A. Yes, sir, subject to our checking it.

Q. Now, the Viking Theatre made offers for, bid, or negotiated, made offers for 11 out of those 28; is that correct, or do you want me to read them off to you?

A. I would like them read off, please, sir.

Q. All right. HELL'S ISLAND?

A. Right.

Q. LUCY GALLANT?

A. Right.

Q. DESPERATE HOURS?

A. Yes, sir.

Q. COURT JESTER?

A. Right.

Q. BIRDS AND BEES?

A. Right.

Q. PROUD AND PROFANE?

A. Yes.

Q. WAR AND PEACE?

A. Yes.

(2101)

Q. THAT CERTAIN FEELING?

A. Yes, sir.

Q. THE MOUNTAIN?

A. I believe THE MOUNTAIN, yes, sir.

Q. THE THREE VIOLENT PEOPLE?

A. I think THREE VIOLENT PEOPLE was after the suit.

Q. No, it was November 13.

A. That was the end of the suit, the day of the suit we bid on the picture.

Q. The playing of it may have been after, but that doesn't matter to me.

A. Right, sir.

Q. I think it is within the date. THE MAN WHO KNEW TOO MUCH, correct?

A. That is right, sir.

Q. Those are 11?

A. I think so, sir.

Q. Now, will you then say yes to my question, that of the 28 that Paramount released you showed some interest, whether you bid or negotiated, in 11, or even without bid or negotiation, that you had something to do with it, like the screening problem that we talked about, 11 out of the 28, is that right?

A. I would say I screened approximately all of the pictures

(2101a)

with the exception of those that I mentioned, STRATEGIC, WAR AND PEACE.

(2102)

Q. Now, of those 11 you received awards of two?

A. LUCY GALLANT and VIOLENT PEOPLE.

Q. That's right.

A. Right, sir.

Q. Now look at your records of where your opposition played, and if you want to I will help you out with the names, but I don't think we have to do this longhandedly.

Let's see where the others played, that is, that you had an interest in.

You got two out of the 11. I am going to mention the nine.

The Mastbaum got one. That is the Stanley Warner Mastbaum, they got one.

Will it help you if I read the picture, so you can identify it faster on your list?

A. Yes, please.

Q. I will do that. Mastbaum, one, HELL'S ISLAND.

A. Right.

Q. That is the one they played. They got one.

The Stanley Warner Stanton Theatre, they got one, THE PROUD AND THE PROFANE.

A. Stanton.

Q. The Stanley Warner Stanley Theatre, they got one, WAR AND PEACE.

(2103)

A. How about STRATEGIC?

Q. No, you never submitted an offer on STRATEGIC AIR COMMAND. You told us—remember, that was the thing that was shown in Washington.

A. You mean only the pictures we bid on?

Q. Bid or negotiated on, that was my question, of course.

A. Right. But of the pictures they released, Stanley Warner, the Stanley Warner got two pictures, STRATEGIC and WAR AND PEACE.

Q. Please listen to my question, sir. There are many other statistics and I will be glad to make up any other group. Listen to this group.

I say of the 11 out of 28 Paramount pictures that you made an offer for,——

A. Right.

Q. —you got two. Now I am trying to list where the other nine went that you had an interest in.

A. Right, sir.

Q. Right? So now the Stanley Warner Mastbaum got one, the Stanley Warner Stanton Theatre got only one,

the Stanley Theatre got only one. Now, that is three for three theatres. You got two for your theatre.

Now I go to the Goldman. The Goldman Theatre got one.

(2104)

Do you want me to give you the name? THE MOUNTAIN.

A. Right, sir.

Q. The Midtown got four, the Goldman Midtown: DESPERATE HOURS, COURT JESTER, BIRDS AND BEES and THAT CERTAIN FEELING. And the other Goldman theatre got none, the Randolph.

So that the Goldman Theatre got one and you got two. The other Goldman theatre got four and you got two. So for two theatres they had five and you had two of those pictures that you had an interest in.

Now I go——

Mr. Sawyer: You say "had an interest in," you mean for which he bid?

By Mr. Nizer:

Q. Or which you made an offer, showed an interest. On which you made some offer.

A. That's right.

Q. Now, the Arcadia, which is the Shapiro we talked about, that is not a theatre associated either with the Stanley Warner defendant or the defendant Goldman Theatres, it is another theatre operated by the Shapiros. They got one out of those 11—yes, out of the nine left, so the Viking got two, the Midtown four, the Arcadia one, the Goldman one, the Stanley one, the Stanton one and the Mastbaum one, is that

(2105)

correct, according to your recollection?

A. Yes, sir.

Q. Now, there were a number of Paramount pictures of this 28 that were released during this period in which you showed no interest, neither made a bid nor an offer of any kind, didn't even try to screen them, I think, but in any event you had no interest in and you make no claim in this lawsuit.

I am going to mention some of those to you, Mr. Wren.

A. Those that I did not screen?

Q. I am not sure whether you screened them, frankly.

A. I screened them all.

Q. Whether you screened them or not, these were pictures that you admit in your papers you have no complaint about at all.

I want to call your attention to some of those that you did not go after, in other words, during this period.

One was PARDNERS. Who was in that?

A. Jerry Lewis, right?

Q. Martin and Lewis. And in July '56 they were very big attractions, particularly then, weren't they?

A. I believe it will show they were on the wane in July of '56, sir.

(2106)

Q. Do you know what the national film rental of PARDNERS is? Can you look at your list there?

A. I don't have that list here, sir.

Mr. Nizer: Please give it to him.

By Mr. Nizer:

Q. Well, while they are getting it for you, $3,800,000. That is a very high one, isn't it?

A. Yes, sir.

Q. Another picture you neither bid nor negotiated for is REAR WINDOW. Who was in that? I am talking of Paramount pictures that you passed up.

REAR WINDOW. Who was in that?

A. James Stewart, Grace Kelly, right?

Q. And that had a national film rental of $4½ million. That was an outstanding picture, as it turned out, too, wasn't it?

A. Hitchcock.

Q. And a Hitchcock picture?

A. Right, sir.

Q. And you showed no interest in that.

WE'RE NO ANGELS, who was in that, do you recall?

A. I believe it was Bogart.

Q. Pardon?

(2107)

A. Humphrey Bogart.

Q. I think that is right. And it was a $2,500,000 picture?

A. Right, sir.

Q. TO CATCH A THIEF, who was in that? Cary Grant and——

A. Grace Kelly.

Q. —Grace Kelly?

A. Right, sir.

Q. Was that also a Hitchcock, if I recall?

A. I am not sure. It was an important picture.

Q. This is Hitchcock, isn't it? Yes, $3,700,000 picture. You showed no interest in that.

ROSE TATOO. That is Anna Magnani. Do you remember that picture, that Italian star?

A. And Burt Lancaster.

Q. Tennessee Williams. And Burt Lancaster, the Tennessee Williams play.

A. Right, sir.

Q. That was a $3½ million picture.

Incidentally,—withdrawn.

SABRINA—oh, I think that was—SABRINA was before you came?

A. Yes, sir, way before.

will skip that.
'EN LITTLE FOYS, with Bob Hope.

Yes, sir.
That was a $3,700,000 production. You made no
get that.
VER TOO YOUNG, another Martin and Lewis pic-
800,000. That is a pretty high national film rental.
TISTS AND MODELS, Dean Martin and Jerry
That is another one you passed up.
What was the gross on that one, sir?
ARTISTS AND MODELS, $3,200,000. Very high,

Yes, sir.
All right. Incidentally, you testified about KISS
E DYING, remember? You testified about that,
vas available in July 1956. You remember you gave
ny on that picture KISS BEFORE DYING?
It is one of the pictures I played, yes, sir, I be-
did.
Yes. At the very same time that that picture,
ou said was of a low quality, was playing at your
there was available for that time the PARDNERS,
),000 production, as it turned out, which you didn't
ny effort to obtain?
Well, there again, sir, it depends on when the bids
ie for these particular pictures. Now, I——

Well, I would say—
I may have purchased KISS BEFORE DYING the
art of June, having lost pictures that I bid for in

• • •

I am going to ask you to check it in the recess.
ot take the time now to spell it out for you; that

you didn't have a picture booked in at that time and that you could have bid, according to your records, for the PARDNERS, this large picture, when you were playing KISS BEFORE DYING.

Will you check that with your own records so I don't have to do it now?

A. I certainly will, yes, sir.

Q. Thank you. And to help you I will tell you that the KISS BEFORE DYING was awarded to you on July 3, '56. That will enable you to look at your records faster.

Mr. Sawyer: No, it is the bid date, Mr. Nizer.

(2110)

A. I didn't bid on the picture. I don't recall—I think I negotiated a deal with United Artists.

By Mr. Nizer:

Q. Well, you look it up. Also you might as well look up at the same time REBEL IN TOWN, which you testified was a weak picture which you played because that is July 27, 1956 and you could have gotten that $3,800,000 picture—I don't know whether you could have gotten it, you could have tried to get it, bid for it or negotiated for the $3,800,000 picture.

A. Right, sir.

Q. Now I call your attention to one other matter, still dealing with the Paramount pictures.

Four of these pictures that I have mentioned—and I will repeat them. You look at your opposition record and tell me if this is correct—REAR WINDOW, with Grace Kelly, Jimmy Stewart and Hitchcock, a Hitchcock film, didn't play either at the Stanley Warner Theatres or at the Goldman Theatres, it was won and played at the Arcadia Theatre, is that correct?

A. Yes, sir.

Q. Have you your record?

A. Yes, sir.

Q. All right. SABRINA.

(2111)

A. SABRINA is not in the period, sir.

Q. Well, would you know from your opposition record?

A. I don't have opposition records, sir. All I have is the pictures that played the Viking.

Q. You haven't got—

A. SABRINA was way before I joined it.

Q. All right, I will skip it.

WE'RE NO ANGELS, with Humphrey Bogart and Joan Bennett, which you showed no interest in, wasn't won by the Stanley Warner or the Goldman but it played at the Arcadia Theatre. That is the Shapiros?

A. Yes, sir.

Q. TO CATCH A THIEF, with Grace Kelly and Cary Grant, this $3,700,000 picture which you showed no interest in, was not won by Stanley Warner or Goldman but was won by the Trans-Lux. That is operated by a man by the name of Brandt, isn't it?

A. The Trans-Lux chain, that's right.

Q. One of the first-run theatres.

And ROSE TATTOO was played also at the Trans-Lux, one of those big pictures I mentioned, isn't that right? Do you recall that?

A. I believe it was, sir.

Q. Now, you testified concerning the Columbia picture THE HARDER THEY FALL. You never bid or negotiated for this

(2112)

picture, did you?

A. No, sir, because they would not afford us a screening of the complete picture.

Q. What you mean by that is that they advised you, the company had advised you, that they didn't have a full print available, and they wanted to get this picture out immediately for the Easter week, and so they had gotten

up a two-reel of shots from the picture to screen for exhibitors instead of the whole picture, is that correct?

A. Yes, sir.

Q. And you were so advised in writing, weren't you?

A. I believe we were, yes, sir.

Q. By Columbia?

A. I think we were, yes.

Q. Now, when you testified on this and you simply said "We couldn't see the motion picture, they would only afford us an opportunity to see two reels, and after the screening of which we were to submit an offer, but we could not see the motion picture."

Didn't you intend to give the impression to the Learned Court and this jury that you were being treated differently than all the other exhibitors in this territory, or didn't you intend to leave that impression?

A. I did not, sir. And I think—

(2113)

Q. All right, all right, if you didn't.

A. Didn't I mention that Mr. Jackter had seen the picture, that I had read where he had seen the picture, or Mr. Montague?

Q. Yes, you said something about Montague, but you left the impression, at least I thought it might be and I am trying to correct it—if you say you didn't intend it we will go on.

• • •

Q. I show you this copy of a letter—your counsel has the original, so that you will understand that—and ask you whether that isn't the notification from Columbia about the picture THE HARDER THEY FALL, that you received at the time.

A. Yes, sir.

Mr. Nizer: I offer that in evidence, please.

(Letter dated January 26, 1956, to Mr. Jay Wren from L. H. Wurtele was marked Exhibit D-33 (Columbia) for identification.)

(2114)

Mr. Nizer: May I read just a part of this, Your Honor? I think Mr. Sawyer won't object. I want to cut right through this.

Well, I will read it all. It is brief.

This is a letter from Mr. Wurtele, branch manager of Columbia, January 26, 1956, to Mr. Jay Wren at the Viking Theatre:

"Dear Jay:

"We are planning to release THE HARDER THEY FALL starring Humphrey Bogart in important key run situations on or about March 31.

"A completed final print of this picture is not available at this time, but we have prepared an advance special two-reel subject consisting of 30 minutes of scenes from THE HARDER THEY FALL which we are screening on Monday, January 30 at 2:30 p.m. in the Universal Screening Room. We suggest that you arrange to see this unusual special two-reel subject.

"It will be necessary for you to advise us within five days of the above date if you desire to negotiate for this picture.

"Kindest regards.

Very truly yours,"

(2115)

By Mr. Nizer:

Q. Now, in answer to that—that was a very courteous letter, wasn't it?

A. Yes, sir.

Mr. Sawyer: Our objection, Mr. Nizer, is hardly to the degree of courtesy of the letters.

By Mr. Nizer:

Q. And in answer to that letter you sent by registered mail, return receipt requested—I have the envelope here—this letter to Columbia, didn't you?

A. Yes, sir.

Mr. Nizer: I offer it in evidence with the envelope.

(Letter dated February 3, 1956, to Mr. Lester Wurtele from Jay Wren was marked Exhibit D-34 (Columbia) for identification.)

By Mr. Nizer:

Q. Before I read this letter, with His Honor's permission, I want to ask you one question. This letter, this return receipt registered letter, was sent pursuant to a lawyer's advice, in the same way that you have testified you were consulting a lawyer before sending these communications, wasn't it?

Mr. Sawyer: What was the date, Mr. Nizer?

(2116)

Mr. Nizer: February 3, 1956.

A. I doubt it, sir.

By Mr. Nizer:

Q. You doubt it? Didn't you on that very day, you and Mr. Sley, visit your former attorney—not Mr. Sawyer at that time—and have a conference with him?

A. I doubt if it was about HARDER THEY FALL, sir.

Q. I didn't ask you that, sir, for the moment. Did you visit your lawyer and have a conference with him on that day, February 3, 1956?

A. It was early in February.

Mr. Nizer: I won't offer this in evidence but I am going to show it to you to refresh your recollection.

I am just going to show it to him, just to show him the date. I am not going to offer it in evidence. I just want to ask about the date.

By Mr. Nizer:

Q. I show you this, which I will neither identify nor offer in evidence. I just want to ask you whether that date refreshes your recollection that you saw your attorney on February 3rd, the very date that this letter bears.

A. Yes, sir, we did.

Q. All right, that is all I want to know about it.

Mr. Nizer: Now, with Your Honor's permission,

(2117)

may I read this registered letter?

This is the letter in answer to their invitation for you to look at a screening of the picture, the two reels, from Mr. Jay Wren to Mr. Wurtele, of Columbia Pictures, registered return receipt requested:

"Dear Lester:

"This is to acknowledge receipt of and in reply to your solicitation letter of January 26, 1956 covering the motion picture, THE HARDER THEY FALL, which you advise Columbia Pictures Corporation plans to release in important key run situations on or about March 31st.

"The management of the Viking Theatre is of the opinion that in order to properly evaluate the motion picture, THE HARDER THEY FALL, it will be necessary for them to be afforded the opportunity to witness a showing of the completed motion picture

rather than the 'unusual special two-reel subject' referred to in your letter.

"Inasmuch as the Viking Theatre is interested in submitting an offer for a license to exhibit first-run Philadelphia the motion picture, THE HARDER THEY FALL, the management would appreciate your early advice as to when it will be possible for them to screen

(2118)

the said attraction in its entirety.

"Kindest regards.

"Sincerely,"

By Mr. Nizer:

Q. After sending this letter by registered mail to this ordinary business transaction, did you receive the following telegram from Columbia Pictures?

A. I would say we did, yes, sir.

• • •

(2119)

(Telegram dated February 6, 1956, to Mr. Jay Wren from L. H. Wurtele was marked Exhibit D-35 (Columbia) for identification.)

Mr. Nizer: This is the telegram from Columbia Pictures in answer to that registered letter. It is dated February 6, 1956, to Jay Wren:

"We regret inability screen THE HARDER THEY FALL in complete form. We are affording equal opportunity to you and your competitors and will proceed to do so in accordance with our letter to you of January 26. Your time to signify desires to negotiate hereby extended to 4:00 p.m. February 7.

"Regards.

"L. H. Wurtele"

By Mr. Nizer:

Q. At the time that you received this telegram and since then you found the representation of Mr. Wurtele of Columbia to be correct, didn't you, that there was no screening of the

(2120)

whole picture but only the two-reeler for anybody in Philadelphia, so far as you know, is that right?

A. So far as I know, yes, sir.

Q. And in addition to advising you that you were getting equal treatment with everyone else, Mr. Wurtele of Columbia extended your time from February 4, which was the last day in which to show some interest in this, to February 7 at 4:00 P.M., to put in an offer, did he not?

A. So he indicates, yes, sir.

Q. That was a rather special courtesy, apparently? You considered it that at the time, didn't you, an extension for you because of your protest, right?

A. I don't know what he offered anybody else. To us, yes, it was an extension.

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(2121)

Q. Mr. Wren, we are virtually finished with this Columbia picture THE HARDER THEY FALL. Immediately before the recess we had reached this point where Columbia advised you that they didn't have a full print, they could show you this two-reel subject of the picture, and that there was no general screening for anybody in the territory, they were showing this two-reel subject.

Do you recall that we had reached that point?

A. Yes, sir.

Q. And then you sent that registered letter demanding nevertheless the full picture, and then they sent you a wire where they say they are treating you equally with

everybody else and are extending your time to make a bid from February 4 to February 7—or to make an offer.

A. Yes, sir.

Q. That was the point we reached.

Now, my next question is, after they sent you this telegram, giving you an opportunity, extending your time to make an offer, did you make one?

A. I don't believe we did.

Q. Did you do anything more about it?

A. I don't recall, sir, I don't know.

Q. So far as we know we never heard from you again, that

(2122)

is your best recollection, isn't that so?

A. Yes, sir.

Q. Do you recall that I had asked you about the Loew's Company, and I am coming to Universal, and I want to put one question to connect the time period, that for a period of somewhat short of a year, due to a dispute with Loew's, you voluntarily stayed away from Loew's and refused to deal with them on any of their pictures during that period of that quarrel; do you recall that?

A. I believe that I said that the reason we did not do business—

Q. No, I am not asking for a reason, so please forgive me for interrupting. I am trying to get on.

Mr. Sawyer: Oh, Mr. Nizer—

Mr. Nizer: Let me finish my question before you object.

By Mr. Nizer:

Q. My question is, do you recall that there was a period of about a year that you did not deal for or attempt to deal for any of the Loew's picture?

A. I did attempt to deal for them, sir.

Q. You mean subject to their yielding on the controversy that existed between you; is that what you have in mind.

A. No, sir. Subject to their telling me what their

(2123)

advertising plans were on the pictures for which they were soliciting offers.

Q. Well, all right. I will not attempt to engage you in a discussion of what the nature of the dispute was as you characterized it just now.

Due to some kind of a request on your part and their refusal to grant that request, or vice versa, you voluntarily stayed away from Loew's and refused to deal with them during that period. We have had that, have we not?

A. Yes, sir.

Q. Is it during the period that you are staying away from Loew's that you begin to approach Universal, is that correct, Universal Pictures Company, one of the defendants?

A. No, I think I have said we approached Universal as far back as March, 1955.

We also approached them with reference to FOX FIRE.

Q. On the picture FOX FIRE?

A. Yes, sir. In April of 1955.

Q. On which you withdrew your offer?

A. Yes, sir.

Q. But, in any event, in this period you went to New York with respect to Universal pictures, you made an earnest approach to Universal during this period, is that right?

(2124)

A. I went to New York first on FOX FIRE, sir, in April, early April I believe it was.

Q. Did you see Mr. Dana—who is he?

A. Mr. Dana at that time I believe was the Eastern Division manager for Universal Pictures.

Q. Did you see him on September 7, 1955?

A. I believe that is the day that Mr. Sley and I went to New York with Mr. Heiber, yes, sir, to see Mr. Dana.

Q. And you just mentioned the name Heiber. Who is Mr. Heiber?

A. Mr. Heiber was the local branch manager for Universal International Pictures.

Q. And you told Heiber, did you not, that you were interested in all of his pictures, all of Universal's pictures?

A. I always said that, yes, sir.

Q. And specifically you were interested in the SECOND GREATEST SEX, among other pictures?

A. At the time we journeyed to New York, sir, Mr. Heiber knew, as did Mr. Dana, that we were interested in making a deal for ALL THAT HEAVEN ALLOWS.

Q. Now, I didn't want to interrupt you, but my question—you see, we get off on something else; my question was, did you tell him specifically that you were interested, among other pictures, that might include ALL THAT HEAVEN ALLOWS,

(2125)

in the SECOND GREATEST SEX; that was my question.

A. No, sir, we did not.

I was the only one that saw SECOND GREATEST SEX.

Q. You testified in a deposition for Universal at page 157:

> I told him—Heiber—I was interested in all his pictures.
>
> A. Right, sir.
>
> Q. Q. Did you specifically say so in connection with SECOND GREATEST SEX?

A. Yes.

It goes on about Mr. Sley and I went to New York.

Did you make that answer?

A. If that is what I said, yes, sir.

Q. So you want to take back what you said a moment ago, that you didn't recall saying that, is that right?

A. Yes, sir, whatever I said there.

Q. And I say, you want to take back the answer you gave a moment ago, don't you?

A. With reference to the SECOND GREATEST SEX?

Q. Yes.

A. Yes, sir, I was interested in all of his pictures, including the SECOND GREATEST SEX. Yes, sir.

• • •

(2126)

Mr. Nizer:

• • •

Mr. Sawyer wants me to read the first three questions.

• • •

(2127)

By Mr. Adams:

Q. After you screened the picture, the SECOND GREATEST SEX, did you show any interest in obtaining that picture for the Viking Theatre?

A. I showed an interest in every picture I looked at for the Viking Theatre.

Q. Did you advise Mr. Heiber that you thought you would be interested in playing the picture at the Viking Theatre?

A. I told him I was interested in all his pictures.

Q. Did you specifically say so in connection with the SECOND GREATEST SEX?

A. Yes, Mr. Sley and I conducted Mr. Heiber to New York, and I might add up to this time Mr. Sley told you yesterday he had never met Mr. Heiber.

And so on.

Now, is there anything in that that changes your answer that you made to me a few moments ago?

A. No, sir.

Q. All right.

Now, when you testified at this trial in answer to Mr. Sawyer's question did you not tell him, when he asked you about this matter, that—

• • •

(2128)

Q. (continuing)—you were not interested in all the other pictures. Didn't you so testify, and wasn't that incorrect? is my question.

A. In what, all of the other pictures?

Q. Well, 921:

> We told him we were not interested in the pictures. I had seen the SECOND GREATEST SEX. Mr. Sley had not seen the SECOND GREATEST SEX. All he had screened was ALL THAT HEAVEN ALLOWS. We had not seen THERE'S ALWAYS TOMORROW. We had not been afforded an opportunity to screen NEVER SAY GOODBYE. He knew our policy.

And so on. I am talking about Universal pictures. Didn't you tell Mr. Sawyer that you were not interested and haven't you just agreed that you were interested in all the pictures, that this was an error that you testified to? is my question.

That is an error isn't it?

A. I have indicated that I was interested in the SECOND GREATEST SEX, from what you read me there, and ALL THAT

(2129)

HEAVEN ALLOWS, and we indicated why we were disinterested in the other pictures, because we had not seen

ning THERE'S ALWAYS TOMORROW and
AY GOODBYE.
t when you testified in the Universal deposition,
in 1956, you said:
told him I was interested in all his pictures.
s, sir.
w, was your memory better in 1956 about this
ı than it was a week ago, when Mr. Sawyer asked
it?
elieve I said there in March I was interested in
e pictures too, sir, but that doesn't necessarily

m not asking about the month, I am asking you,
be frank and candid with me, whether you
error when you told Mr. Sawyer in this trial
veren't interested in the other pictures of Uni-
r or five, or whatever there were, whereas you
ed in the Universal deposition that you were
in all the pictures.
ght, sir, but qualified it by saying we had not
RE'S ALWAYS TOMORROW, and we had not
ER SAY GOODBYE.
s, but you were interested?

s, sir, in all of their product.
you could get them at a proper price.
all of their product we were interested.

• • •

u also testified, did you not, that Mr. Dana had
ı—and I don't quote—in substance, that he want-
antee from you, a cash guarantee, I mean, be-
ad had no experience at your theater; do you
substance of that testimony?
elieve the only meeting Mr. Dana spoke of ex-

u know, you start in a different direction.

The Court: Well, he can answer the question yes or no and then he can explain.

Mr. Nizer: That is right.

By Mr. Nizer:

Q. Will you please listen to my question and answer it: Do you recall that you told Mr. Sawyer at this trial that Mr.

(2131)

Dana wanted a guarantee from you because he had no prior performance at your theater, and consequently he would have to ask for a guarantee; that is why he wanted a guarantee on these pictures; now, did you give that testimony? is my first question.

A. Yes, but I would like to know at what meeting.

Q. All right. Page 924. You have apparently gone to New York, as I can see from page 923.

We called his attention to the fact that we know of no other pictures in Philadelphia, any other exhibitor giving a guarantee; he said: I must have some reason to go back to Stanley Warner and Goldman and tell them why you got those pictures.

A. Right sir.

Q. (Continuing) I have no performance on your house. Do you recall that testimony?

A. At the time that Mr. Dana and I had a lengthy discussion about performance is when I was negotiating with him for FOX FIRE, and he told me that he would have to have a guarantee from the Viking Theatre because he had no performance.

Q. No, I am talking about this meeting, not FOX FIRE. I am talking about the meeting where you begin the answer:

Mr. Sley and I worked at the end of Mr. Dana's desk, and at the conclusion of some three or four hours

(2132)

of negotiation, we arrived at a price on SECOND GREATEST SEX at $17,500, $27,500 for ALL THAT HEAVEN ALLOWS, and $22,500 for NEVER SAY GOODBYE. The entire package came to $85,000.

We told Mr. Dana—

various things and then—

We called to his attention—

the guarantee. And he said: I have no prior performance.

So this is not with respect to FOX FIRE.

A. I don't recall any discussion at that meeting with Mr. Dana about performance.

Mr. Dana's remarks at that time were:

I have to have a reason for taking these pictures away.

Q. Well, now, Mr. Wren, would you say that the testimony at 924 that you gave at this trial in answer to Mr. Sawyer was incorrect?

A. No, sir, I think in substance that is what I am saying there, but I don't recall at that meeting any question about performance. At that meeting the discussion primarily was about—

Q. I am sorry. You do not have to repeat it.

Mr. Sawyer: Do not interrupt him.

(2133)

By Mr. Nizer:

Q. You do not have to repeat it. Listen to my questions, and we won't argue with each other, we can be briefer about this.

A. Right, sir.

Q. When you testified in answer to Mr. Sawyer's questions at page 924, after going through all of the prices and negotiations for three or four hours on these four Universal pictures, and then you called Mr. Dana's attention

to there being no other guarantees that you knew of in this territory, which I will not challenge at this moment—when you told him that and he made these comments, among which were, I have no performance on your house. Was that an incorrect recollection?

A. That was incorrect, because at that meeting there was no discussion.

Q. All right, then that is all. So that was incorrect, was it?

A. Right, sir.

Q. Did you over the week end read the Universal deposition that you gave?

A. No, sir

Q. How many times have you read the Universal deposition that you gave?

(2134)

A. Maybe twice.

Q. Maybe five times?

A. No, sir, maybe twice.

Q. Do you recall testifying at 174 of the deposition:

> Didn't Mr. Dana say at the meeting, in view of the fact that Universal had not played any pictures up until that time at the Viking Theatre, that his company had no experience, and that was one of the factors that prompted him to ask for a guarantee?
>
> Your answer was:
>
> No, sir.
>
> You didn't say anything to that effect?
>
> No, sir.
>
> Or anything like that?
>
> No, sir.

And when you testified at this trial that the reason for the guarantee was Mr. Dana's statement that he had no prior experience, you knew at that time that that was incorrect when you gave that testimony, didn't you?

• • •

(2136)

Q. When I read this to you before and asked you whether your testimony was correct that you gave to Mr. Sawyer a week

(2137)

ago, you said, no, that was incorrect. Didn't you a few moments ago take back this subject about guarantee having been mentioned by Mr. Dana at all at that meeting?

A. As I understood, sir—

Q. No, answer my question, sir.

A. I would like to have it read back. I would like to have it read back to hear what I said.

Q. Before you make a request, answer my question: Didn't you a few moments ago, sir, in all candor state that was incorrect; there was no discussion of guarantee at that time?

Mr. Sawyer: Performance.

The Witness: No, I didn't say anything about no discussion of guarantee at that time. I said there was no discussion of performance at that time.

By Mr. Nizer:

Q. Do you now tell us that this testimony that you gave, "I have no performance at your house," that sentence, that that was incorrect?

A. His reason for going back—

Q. Will you answer my question directly.

A. As you read it, it is incorrect, yes, sir.

Q. Now, as I read it is what you said, isn't it?

A. I said some other things prior to that statement.

Q. I know you did. I know you did. You said a lot of

(2138)

things. I am asking you whether your testimony which included your statement under oath to Mr. Sawyer that when you said no one else gives a guarantee—

Incidentally, that wasn't a true statement, was it?

A. What do you mean, when I said that no one else gave a guarantee?

Q. "We called his attention to the fact that we know of no other pictures in Philadelphia, any other exhibitor giving a guarantee." Now, that wasn't correct. You know of many exhibitors who give guarantees, don't you?

A. To—of the defendant exhibitors? No, sir, I do not.

Q. You don't know of any guarantee given by Stanley Warner on any of its pictures?

A. At this time?

Q. At any time.

A. I do after this, yes, sir.

Q. And before that, in nineteen fifty—this time that you are referring to, you mean the date of the conversation in '57?

A. Yes, sir.

Q. '56, whatever it is?

A. '57—'55, 1955.

Q. You mean there were no guarantees? Haven't you testified

(2139)

at this trial of guarantees that your counsel read as given by other exhibitors? Do you remember what he said?

A. September 7, 1955? No, sir.

• • •

Q. I am not asking you on that date. I will take your answer and won't even cross-examine further. On this subject are you telling us now that in September, 1956—

Mr. Sawyer: '55.

The Witness: '55.

By Mr. Nizer:

Q. —'55 that you knew of no first-run exhibitor in this territory giving guarantees on pictures?

A. Defendant exhibitors.

Q. Yes. Do you know of any other exhibitor who gave guarantees?

A. We did not, but I knew the defendant exhibitors were not and we indicated as much to them—

Q. Did you know—

A. —as early as April when I spoke to them about FOX FIRE.

(2140)

Q. Answer my question, please, directly. You are telling us that in September, 1955 you had no knowledge of any defendant exhibitor having offered a guarantee on a picture; is that correct? Is that what you want to tell us?

A. That's what I said, yes.

Q. Had you offered some guarantees prior to that time?

A. FOX FIRE.

Q. And you are telling us that you thought you were the only one who was giving a guarantee on a picture in this territory?

A. Up until that time.

Q. And that includes any other exhibitors besides the defendant exhibitors or only the defendant exhibitors?

A. Defendant exhibitors.

Q. Going on, when you said in answer to Mr. Sawyer a week ago that you know of no other exhibitors giving a guarantee, and including his comment, "I have no performance at your house," you now tell us he didn't make that comment; is that right?

A. No, sir, he said he was going back and he had to have a reason—

Q. I am not asking you what he did say. Did he make the comment, "I have no performance," in words or substance, "at your house," giving that as the reason why he wanted the

(2141)

guarantee?

A. No, sir.

Q. He didn't make it?

A. No, sir.

Q. And, therefore, this statement is incorrect as you have testified to?

A. What you are telling—

Q. Is it incorrect?

A. The statement basically is correct, yes, sir.

Q. Now, is it correct or incorrect that he said, "I have no performance at your house," in words or substance?

A. That he would tell them—

Q. No, not what he told them; did he at that time mention the subject of not having a performance at your house? It is only one way or the other correctly.

A. No, sir.

Q. Can't you, please?

A. No, sir.

Q. He didn't?

A. No, sir.

Q. Therefore, the statement in your minutes—listen to me and answer — "I have no performance at your house," was not a statement made at this conference, was it?

A. That isn't the complete statement, sir.

(2142)

Q. I am asking whether that part of the statement was mentioned by him. I know this was a long conversation. It runs for—

A. That is part of the reason he was going to give to Goldman and Dana, but there was no discussion between Mr. Sley and I and Mr. Heiber and Mr. Dana at that meeting about performance. Mr. Dana and I had that discussion early in April on FOX FIRE when he had told me I would have to put up a guarantee.

Q. You have since this suit had access to all of the records of the defendants, even the theaters, have you not? You have gone over all their different terms and bids and so on, have you not?

A. I would say so, yes, sir.

Q. Well, can you now tell me that you have learned, let's say, since this suit began, that there were guarantees, large guarantees?

A. Before that, sir.

Q. Yes, before that, before February.

A. Before the suit started we learned that at a subsequent meeting with Mr. Dana.

Q. No, listen to me a moment. I am talking about your prior statement that the defendant exhibitors didn't give guarantees. Do you follow me?

(2143)

A. Yes, sir.

Q. Now, I am asking you, didn't you learn at least since this suit began that the defendant exhibitors prior to '55, prior to February of '55, had given guarantees? Haven't you learned that at least since this suit began?

A. No. Prior to February of '55?

Q. Yes.

A. I believe so, yes, sir.

Q. When a license application is drawn up for pictures, it must be approved by the home office of the motion picture company. That is the practice, is it not?

A. That's the practice, yes, sir.

Q. The application when you fill out an offer ripens into a contract when it is approved by the home office or the individual producer, depending on the company, correct?

A. Yes, sir.

Q. And the application for four pictures in the Universal case was signed by a home office official and approved September 14, 1955; is that right? Do you want to see the contract?

A. I would like to see the application, I mean the contract, sir, the license agreements.

Q. Let me show you a few with the stamp "C. J. Feldman, September 14, '55," and ask you if that isn't the approval

(2144)

of the home office stamped on it and the date next to your signature, you see.

A. Yes, rubber-stamped "C. J. Feldman, September 14."

Q. And that is the home office approval; right?

A. Yes, sir.

Q. Feldman was what, the general sales manager?

A. Vice president and general sales manager, I believe he was, yes, sir.

Q. Yes. Thank you.

So that on September 14, 1955, you had approved contracts for the Universal pictures, these four pictures, that we will discuss a little further; is that right? You now have the date before you.

A. Yes, sir. I don't know whether we had them then or not, so, sir, I don't know when we received them. That's what it says there, September 14, '55.

Q. And you had signed this, of course, before that date; they have got to approve it within seven days, is it, or fourteen days in some cases?

A. We set no date on it, sir.

Q. That is right. Now, therefore, before Dana and Rosian of Universal came to Philadelphia to see you, as you testified, I believe, you had a deal with them which had been approved by the home office; is that correct? Can you place the time?

(2145)

A. Dana and Rosen?

Q. Rosian.

A. Rosian, Pete Rosian, yes, sir.

Q. Incidentally, these pictures were Universal's outstanding pictures at that time, were they not?

A. No, I think—

Q. No?

A. BENNY GOODMAN—

Q. Give us the stars. Who was the star of these pictures?

A. Of which, SECOND GREATEST SEX?

Q. Yes.

A. Kitty Kallen and Guy Madison.

Q. And of the others?

A. NEVER—I mean ALL THAT HEAVEN ALLOWS, Rock Hudson and Jane Wyman.

Q. Now, stop there. Was Rock Hudson an outstanding star of the industry?

A. Yes, sir.

Q. And George Sanders was in that picture?

A. I don't recall. Jane Wyman was in that picture.

Q. So these were two Rock Hudson pictures, weren't they, among these four?

Mr. Sawyer: Two?

The Witness: What two? I have only mentioned

(2146)

SECOND GREATEST SEX and—

By Mr. Nizer:

Q. Well, they were two among these four that starred Rock Hudson with other stars.

A. NEVER SAY GOODBYE, Rock Hudson and Cornel Borgian, a foreign star.

Q. These contracts were all separate; they were four separate contracts signed, one for each picture; correct?

A. All on the same date at the same time.

Q. Right. Mr. Wren, I don't doubt it, but would you answer my question: I asked you whether they were sepa-

rate contracts. I am going to offer them in evidence and the dates will be on them but, sir, you don't have to do that.

A. Yes, sir.

Q. Just answer my question.

A. Yes, sir, four separate contracts.

Mr. Nizer: Have you the fourth?

Mr. Sawyer: Which one are you missing?

Mr. Nizer: Oh, I have it; I have them all I offer these in evidence.

(Universal Film Exchanges feature license agreements for THE SECOND GREATEST SEX, ALL THAT HEAVEN ALLOWS, THERE'S ALWAYS TOMORROW, and NEVER SAY GOODBYE were marked Defendants' Exhibits 36, 37, 38, and 39 (Universal)

(2147)

for identification.)

Mr. Nizer: Your Honor, I just want to read one heavily blocked clause. It is very brief. I am not going to read the contract in.

There is a printed clause on this in heavy type, ladies and gentlemen, I just want to read to you:

"The Exhibitor"—that would be Mr. Wren—represents and agrees that in so far as more than one feature length motion picture is licensed hereunder, the terms of the license for each one of the said feature length motion pictures was negotiated separately, that the licensing of one feature length motion picture was in no wise conditioned upon the licensing of any other feature length motion picture and that the several feature length motion pictures were so included in this license agreement for reasons of mutual convenience.

(2148)

By Mr. Nizer:

Q. Now, these four contracts, the negotiations for these—withdrawn.

These contracts were not the result of bids, they were the result of your negotiation over a period of three or four hours with these gentlemen that you have told us about?

A. That's right. Universal wasn't bidding.

Q. So far as you know, these four pictures had not been offered either for bid or negotiation to any other exhibitor up to that time but yourself, trying to make a deal with you on these, correct?

A. I don't know, sir.

Q. So far as you know, Universal and you meeting in New York and in Philadelphia prior thereto were trying to make a deal for the whole group of these pictures in the sense of each picture going to you in sequence, although they would be individual deals, as these contracts indicate, with you, and without submitting them for negotiation to anybody else, so far as you know, is that right?

A. The contract does not indicate that those pictures go to me in sequence, No. 1.

No. 2, as far as I know, I don't care—I don't know who Universal had offered these pictures to. The

(2149)

screening room was full at the time that ALL THAT HEAVEN ALLOWS was screened.

Q. So far as you know, you were the only one that was being negotiated with? You have no other knowledge of anybody else one way or the other, is that what you are telling me?

A. There was no one in the office with Mr. Sley and I except Universal executives. There were no other exhibitors there, sir.

Q. My question is not who else was there but so far as you know, as I understand your answer, you have no knowledge of anybody else having negotiated for this picture prior to you?

A. I wouldn't know, sir.

Q. Now, you recognize your right to make a deal for these four pictures one by one, one of them, two of them, three of them, four of them, without the distributor having the obligation to go to the Trans-Lux, Arcadia, Stanley Warner to negotiate with them? You had a right to buy these pictures whether they negotiated or not, didn't you?

A. Well, it all depends on what basis they are being offered, sir. If they are being offered during competitive negotiations then everybody should have a solicitation letter inviting them to submit offers. If it is out and out, no.

Q. I am talking about—

(2150)

A. It changes the complexion of the thing entirely. You either have bidding or you do not have bidding.

Q. If it is a bid, then of course it should be submitted to those who can bid. But I am asking you on this transaction, so far as you know, you were not concerned and you had no reason to be—I am not suggesting you should have either, Mr. Wren—that you were being dealt with exclusively if you could make a deal; you had a right to make that deal, didn't you?

A. We didn't know whether it was exclusive or otherwise. We were making a deal.

Q. Somebody at counsel table the other day said something about inventory. This gave you an inventory of two Rock Hudson pictures and two other Universal Pictures, that is, you had ready on the shelf, in a symbolic sense, these four pictures for future use, didn't you, after this deal was made?

A. Yes, sir.
Q. And that was a very desirable thing to have, wasn't
or an exhibitor to have some kind of let's call it inven-
? I don't think that is a technical name here, but we
what the meaning is. That is a desirable thing to have,
it?
A. Oh, yes, sir, yes, sir.
Q. Now, you have testified—and you did today again—

1)

t Mr. Dana or Heiber saying they wanted to go to
ley Warner and Goldman about this matter, after this
saction had been concluded. I am asking you whether
was said by the Universal executive wasn't that he
going to tell Mr. Goldman of the sale of these four
ures, not ask him whether he should make the sale to

Do you understand my question? He was going to tell
of the sale as a matter of courtesy to someone else
idn't dealt with.
Now, in that context—it is a rather involved question
I wouldn't blame you if you were somewhat confused.
l re-state it.
A. I am very confused.
Q. All right, then I will state it over. I don't blame
Mr. Wren. I am trying to be fair about this.
Your testimony gave the impression, at least to me—
ou didn't intend it, please correct it—that you were
g to give the impression that Mr. Dana of Universal,
leiber, wanted to go to Stanley Warner or Goldman
ort of get approval for making this deal with you. I
asking you whether the impression you intended to
—and isn't it the fact—that what happened was that
aid after the deal was made with you, "I am going to
Goldman and Stanley Warner that I have made this
." He

(2152)

wanted to go to another customer and extend that courtesy to him. Isn't that the substance of that conversation, and didn't you intend that?

A. That is not the substance of the conversation.

Q. I see. All right, then let's go into it. Then I was right in the impression you tried to give, wasn't I?

A. That isn't the—

Q. That he was trying to clear it?

A. That isn't the understanding we had with Mr. Dana. I would like to clear that.

Q. I say, you are trying—you were trying to give the impression—I was not in error—that the Universal executives couldn't make the deal with you until they had gotten an approval from these other exhibitors?

A. I don't think I said that, sir.

Q. Well, now, then, I won't have to cross-examine about it, so clear me up.

Here is my question again. Is it correct to say—withdrawn.

Have you had occasion when a distributor has made a negotiation with someone else—not a bid picture—and never even came to you to negotiate with you, just made a deal with say Trans-Lux, have you on some occasions had that distributor-representative meet you some place or call

(2153)

you up, or when he sees you say, "Jay, I want to tell you, I made a deal with so and so, I just want to tell you that as a matter of courtesy, that I have sold my picture on this so that even though I sent you a letter, don't bother to do anything about it."

Has that happened to you?

A. Do you mean they told me that after they had solicited an offer?

Q. After they had solicited—

A. Oh, no.

Q. —but made a deal with someone else.

Never?

A. No, sir, not after they have solicited an offer. They might have—

Q. Now let me ask the other form of question. Suppose they haven't solicited an offer from you, has anyone ever said to you, "You know, Jay, you know we have these two pictures but I have already made a deal with the Trans-Lux," or whoever it be. "I just wanted you to know that. You know we have got these pictures but I am not coming to you on these. I have made a deal with someone else."

Is that kind of courtesy extended in the industry in an informal way?

A. I can't recall ever being told that, sir.

(2154)

Q. Haven't there been occasions and haven't there been even letters already shown to you in this case in which you were advised even after a solicitation—for negotiation, not for a bid,—

A. Oh, well,—

Q. Is that different?

A. After offers were rejected they have told me that "We have"—especially on foreign product, met me on the street and said, "We didn't solicit any offers. We sold this picture to the Studio Theatre." But I haven't expressed interest in the foreign product.

Q. I am not talking of foreign, I am talking of defendant distributors' products.

What I am getting at, Mr. Wren—I am not trying to be mysterious about it—what I am getting at is isn't it the ordinary courtesy between buyer and seller if you have sold to an opposition, to a competitor, when you meet the fellow you haven't sold to and you want his good will for the next picture, you say, "Jay, you know I made a deal with the other fellow but I will try to do business

with you next time. Don't take offense that I didn't even come to you on this matter. I wanted to make a deal with them."

A. They indicated that in March of 1955 when they told me,

(2155)

"My product has been sold to October."

Q. All right.

A. Mr. Heiber told me.

Q. Yes. So it has happened; it has happened?

A. Yes, sir.

Q. Now, I ask you this. With that introduction, maybe this is clearer. Didn't the Universal executives say to you that they were going to tell Mr. Goldman of the sale of these four pictures, tell him that they had sold them, not ask whether to sell them? Didn't they tell you? Didn't they say to you, "We are going to tell Mr. Goldman," is my question.

A. Did I ever say or indicate at any time that they said they were going to ask Mr. Goldman?

Q. Well, I don't think you did.

A. I would like that part read to me, sir, where I have said that Mr. Dana or Mr. Heiber said they were going to ask Mr. Goldman.

Q. In other words, you say that never happened?

A. I don't remember testifying to that effect, no, sir.

Q. And not only didn't you so testify, but I want to get it clear and I will leave the subject. It never happened, did it?

A. Of where they said they were going to ask Mr. Goldman?

(2156)

Q. That's right.

A. No, I never said that they said that, sir.

Q. And they didn't?

A. No, sir, they did not say they were going to ask Mr. Goldman.

Q. Now I ask you affirmatively. Didn't they tell you that they were going to tell Mr. Goldman that they had made this deal with you?

A. That isn't the way it was given to us at all, sir.

Q. All right, let's see. You testified at this very trial—

Mr. Sawyer: What page?

Mr. Nizer: 928, Mr. Sawyer.

"Mr. Dana told me at breakfast at the Warwick Hotel that he was going to Mr. Goldman's office with Mr. Heiber to tell Mr. Goldman of the sale of these four pictures to the Viking Theatre, and that at the conclusion of the meeting he was going to Stanley Warner, and after he had advised them of the sale of these four pictures, he would phone me to let me know that it was perfectly all right whether to advertise the pictures or not."

By Mr. Nizer:

Q. Did you make that answer at this trial in answer to Mr. Sawyer's question?

(2157)

A. Yes.

Q. And that was correct, wasn't it?

A. Yes, sir.

Q. Wasn't the meaning and substance of the conversations with Dana that they were going to break the news to Bill Goldman about having made the deal with you; break the news meaning they knew nothing about—the other exhibitors didn't know that Universal was dealing with you and he was going to break the news to him?

Did you ever say that, or is that a fact?

A. No, sir. I could have broken the news by advertising and they wouldn't let me.

Q. All right. Did you give this testimony in the Universal depositions:

They told me—

Mr. Sawyer: Page?

Mr. Nizer: Page 178.

They told me—it is Heiber, Dana and Pete Rosian —they told me at the meeting they were going over to tell Bill Goldman and break the news to Bill Goldman.

A. I may have used the word "break the news," yes, sir.

By Mr. Nizer:

Q. What is that?

(2158)

A. I may have used the word "break the news," yes.

Q. I didn't ask you whether you may here, I am quoting you.

A. I said it, yes, sir, to tell Bill Goldman and break the news, yes, sir.

Q. Yes. So the answer you made a moment ago that you never said that, that is incorrect, isn't it?

A. Yes, sir, yes, sir.

Q. That was incorrect?

A. That's right, sir.

Q. Now, you told us on direct examination, and also today you happened to volunteer it at one point, that they told you the first picture would be a Thanksgiving date picture and later they changed it to Christmas. Is that correct?

A. Yes, sir.

Q. In other words, you claim—do I understand you correctly—you claim that when you were making this transaction for the SECOND GREATEST SEX, that Dana represented to you that it would be available when, Christmas or November, Thanksgiving?

A. "You can have that one for Thanksgiving," I think he told us.

Q. Now, in the first place, you have seen the general release schedule of Universal and you know, do you not, that

(2159)

they are listed, THE SECOND GREATEST SEX, for Christmas? That was the official announcement of the company, not Thanksgiving? You know that, don't you?

A. No, sir, I do not. Up until this time we hadn't been getting release schedules from Universal.

Q. You had never seen a general release schedule of Universal, is that your testimony?

A. Up until this time? No, sir, they had not sent them to us.

Q. Not sent them to you. Had you seen a general release schedule on this picture?

A. No, sir.

Q. And you didn't know that it was listed by Universal for December, not, as you say, for Thanksgiving?

A. He told us at the time "It is a December picture that you can have for Thanksgiving."

Q. I show you these—

Mr. Sawyer: May I see them?

By Mr. Nizer:

Q. —these four release schedules of Universal with the release date for December for the SECOND GREATEST SEX on each of them and ask you if this information ever came to your attention at the time you were making this transaction.

(2160)

A. These were never shown to us in the office, sir, when we were making these deals.

Q. I didn't ask you whether they were shown to you in the office. I asked you whether those dates ever came

to your attention before the time that you were making this transaction.

A. Before we made this transaction?

Q. That's right.

A. No, sir, no, sir.

Q. Well, at the time that you were making this transaction was there a list brought in of the four pictures that you were negotiating about, and did that list have the names of the pictures and the release dates?

A. I believe so, yes, sir.

Mr. Dana's secretary brought in such a list to us.

Q. Now, when this transaction was made there were several of these lists, weren't there?

A. I would say roughly five or six.

Q. And you took one, didn't you?

A. One was given to me, one to Mr. Sley, Mr. Dana, Mr. Heiber, and I believe the gentleman who was discussing short subjects came in later. I think he got one.

Q. Now I show you this document and ask you whether this is one of the sheets that was brought in.

(2161)

A. It looks like it, sir.

Mr. Nizer: I offer that in evidence.

* * *

(Photostatic copy of list was marked Exhibit D-40 (Universal) for identification.)

By Mr. Nizer:

Q. Now, whose handwriting on this D-40 is 17,500, 27,500, and so on, do you know?

A. I haven't any idea, sir.

Q. This isn't the copy that you retained for yourself, is it?

A. No, sir.

Q. This is a copy that was worked on on that occasion and kept by Universal, is that right?

A. Well, I wouldn't know what they kept, sir.

Q. Look at SECOND GREATEST SEX, please. What is the date for release on that?

A. December, 1955.

Q. Not November, is it?

(2162)

A. No, sir.

Q. Now I show you this copy, that is, a duplicate of that in every way except certain writing, and ask you whose copy that is of the same document.

A. This is mine.

Q. What is that?

A. My copy.

Q. Your copy?

A. Yes, sir.

Q. Whose writing is that on the top crossing out "December" and putting in "November" on your copy, which isn't on the Universal copy? Whose writing is that?

A. It says "Nov 16 or Thanks," and a line through "December 1955." It looks like mine.

Q. So you took your copy that you have in your file and you changed the date from December to November, is that right?

A. That is not the truth, sir. I didn't take anything out of my file and change the date.

Q. No, no, I didn't—you misunderstand me, I don't say you took it out of your file and changed it. It is your copy which has in your handwriting a changed date from Christmas to Thanksgiving?

A. Not from Christmas. From "December, 1955" to "Nov 16 or Thanks."

(2163)

Q. That is what you are talking about?

A. That's right. I am not talking about Christmas, I am talking about December of '55 to November 16 or "Thanks."

Q. Yes.

A. Not Christmas.

Q. And that same change isn't on the Universal, or the other copy I have shown you, is it, that comes from our files?

A. No, sir, it is not.

Q. Now, whose writing—

Mr. Nizer: Have I offered this in evidence yet? Have you marked this one in evidence? Will you mark this, please?

(Photostatic copy of list was marked D-41 (Universal) for identification.)

• • •

(2164)

Q. Mr. Sley also took one of these, didn't he?

A. I believe he did. I believe I indicated he did, as did Mr. Heiber and Mr. Dana.

Q. Now, while Mr. Steinberg is looking for the original, see if you can make this out. Whose writing is $17,500 and the other figures on Defendants' Exhibit 41?

A. It looks like it might be my writing.

Q. Might it or is it?

A. I believe it is, sir.

Mr. Nizer: Now, I offer in evidence the original of Defendants' Exhibit 41.

Any objection?

(Original of photostat of list of four figures, previously marked Defendants' Exhibit 41 (Universal), was marked Defendants' Exhibit 42 (Universal) for identification.)

By Mr. Nizer:

Q. Now, the price for each of these pictures, as is indicated by these pencil notations in your handwriting,

was put on for each picture separately and negotiated for each picture separately, isn't that so?

A. During the discussion we were discussing the entire package going back and forth with yellow pads and these papers.

(2165)

Q. And my question is, didn't you change, erase, argue about, as one does in a deal of this kind, a price for each of the pictures separately?

A. How to apportion the cost. I have said that we did with yellow sheets of paper with these—

Q. Listen to my question again and I will not have to repeat it. I show it to you. Perhaps you ought to keep it in front of you.

A. Good.

Q. Here is the photostat of your own copy (indicating), look at the erasures, and changes of the price next to each one. You see some there, don't you?

A. Yes, but I don't know what this is.

Q. No, no. Up near the pictures.

A. Yes, sir.

Q. You see that some of them were changed. You were arguing about a price and you shifted it back and forth there, is that right?

A. Yes, but in addition to this we argued with yellow pads.

Q. All right, fine. Now my question is each of those prices that were finally agreed upon was a price for each picture as indicated by the figure next to each picture, is that right?

A. No, sir, because here you will see $25,000, which in

(2166)

no way makes the $87,000.

Q. Well, the $25,000 was one of the figures that was bargained down to what, what is the figure there?

A. There is no figure—that is what I am trying to tell you. There is twenty-five here (indicating) and there is no figure here (indicating).

Q. Look at the original, isn't there a figure here of twenty-five that has been erased? Or is that $27,500?

A. Or it could be $17,500. Here is the twenty-five here (indicating), the same as it is here (indicating).

Q. All right, before you make an error, look at Defendants' Exhibit—Mr. Wren—

A. It doesn't appear here either (indicating).

Q. Mr. Wren, I am not trying to confuse you on this. Take a look at Defendants' Exhibit 40. Doesn't that show that $27,500 was one of the figures that was being debated for that?

A. Are we discussing Defendants' Exhibit or mine, sir.

Q. I am calling your attention to the defendants' copy of your document, with the figure $27,500, not the ones that you ultimately wrote, and I am asking—

A. The defendants—

Q. Listen to me, please. I am asking if that refreshes your recollection that the figure that was being debated for

(2167)

that picture was $27,500.

Mr. Sawyer: Mr. Nizer—

The Witness: The figure that was being debated on mine, the $25,000, is an erased figure. There are several erasures on here, sir.

By Mr. Nizer:

Q. And that shows what?

A. On your copy, the defendants' copy, the one that you say Universal is submitting, they have got $27,000 as clear as a bell, $17,500, $17,500, $22,500. There is no mistaking that. At the bottom there is a 90 over $4975, outdoor $1344.75. Valan. $115. Lo something, $335.

Q. Now that you are through reading it, which I didn't ask you to do, will you answer my question.

A. Yes, sir.

Q. By looking at the Universal copy, Defendants' Exhibit 41, isn't it clear to you that one of the prices that was being discussed for that picture was $27,500?

A. Defendants' Exhibit 41, sir, I do not have.

Q. You have it now.

A. This is Defendants' Exhibit 40, sir.

Q. I beg your pardon. The photostat of the Universal copy.

A. Yes, sir.

Q. Does that refresh your recollection that $27,500 was

(2168)

one of the figures that was being debated in the course of negotiation, honest negotiation?

A. Yes, sir.

Q. And now look at your copy with erasures, doesn't that show that you put down a figure, changed it, argued some more, and put down another figure?

A. Yes, but there is twenty-five here (indicating) and an erasure here (indicating).

Q. Of course. That was the process. So that you did negotiate a price for each of the pictures separately, didn't you? Did you or did you not?

A. Yes, sir, we—

Q. All right.

A. We apportioned the cost of the package, sir.

• • •

(2169)

Q. Mr. Wren, at the recess hour I had shown you Defendants' Exhibit 42 which was the original in your file, I take it, is that right, of these four Universal pictures?

A. Yes, sir.

Q. And that was the document that you obtained at the conference with Dana and Heiber; this is one of them, is that right?

A. Yes, sir.

Q. Now, are the erasures on that document yours?

A. I wouldn't know who made the erasures, sir.

Q. You are looking at the back of it; I am looking at the front.

A. Yes. I say I wouldn't know who made the erasures.

Q. Are the figures that are there over the erasures and on the side yours, your handwriting?

A. They look like it, yes, sir.

Q. And is "December" crossed out in your handwriting and "November" put there, "Thanks," meaning Thanksgiving?

A. "Nov. 16 or Thanks" or "Thanxs" looks like mine, yes, sir,

(2170)

Q. And does that mean Thanksgiving, "Thanxs?"

A. Yes, sir.

Q. And Defendants' Exhibit 40 is the copy of that which I have produced for you from the defendants' file. Do you see that? It has the same figures on it, has it not?

A. No, it doesn't have the same figures on it.

Mr. Nizer: All right.

Now, Your Honor, all I ask, I don't intend to read these, may I show both of these to the jury just to demonstrate their contents?

The Court: Yes.

Mr. Nizer: I think while they are being passed along; I may continue, with Your Honor's permission.

The Court: Very good.

By Mr. Nizer:

Q. You testified about the picture WRITTEN ON THE WIND. That is another Universal picture. Do you recall that?

A. Yes, sir.

Q. And Mr. Sawyer asked you to identify and you offered in evidence this letter of September 19 which is marked P-171, and just so as to identify it for you so you know what I am talking about, that is the letter in which Mr. Dana of Universal writes to you and says that he is willing to have you come in and negotiate for this WRITTEN ON THE WIND,

(2171)

"But I want to tell you, however, that at any such meeting, I will have my attorney present and that everything that will be said will be taken down on the tape recorder or official court reporter as I do not want to take any chance of your misquoting me or my misquoting you," and he invites you to do the same, have a tape recorder, because of a prior experience. That's the letter I am referring to that your counsel offered in evidence.

A. Yes, sir.

Q. Now, I ask you preceding this letter and succeeding this letter, before and after, there was other correspondence, telegrams, exchanged between Universal and you and Mr. Dana and you; isn't that right?

A. Preceding and succeeding?

Q. Yes.

A. I would say there must have been some sort of communication in order to get this reply. Now, as for anything after that I can't remember. There may have been.

Q. Let me see if I can refresh your recollection because this letter now stands by itself.

I show you this telegram that you sent on August 24, 1956, and ask you if this was the beginning in writing of that series of correspondence.

A. Yes, sir, I assume it is the beginning.

(2172)

Q. All right.

A. It had to do with WRITTEN ON THE WIND.

Q. Yes, and then this is the answer to your telegram, is it not? I show it to you, August 28, 1956. Notice the dates.

Mr. Sawyer: Could I see the 24th, Mr. Nizer? I just have August 23. I don't think it makes any difference. It is the same thing.

Mr. Nizer: Yes, all right.

Mr. Sawyer: My date says the 23rd.

The Witness: May I see Ferd Fortunate's letter, please?

By Mr. Nizer:

Q. Yes.

A. No, the Ferd Fortunate letter, the one I referred to there.

Q. That is August 21. I don't know that I have it at hand. Does it matter?

A. Yes, evidently, because he referred to a screening. He was the booker.

Q. All right. What did he advise you to do? Whatever you say about the screening I don't think—

A. I would assume he told me there was a print available for screening.

(2173)

Q. All right.

A. But then in that event this would contradict that, the availability—"We will be happy to screen this release for you at your convenience."

Usually what happens, the booker would advise of a particular screening, you understand?

Q. Is this the letter you refer to, August 21? We will put that in first, then.

A. Yes.

Mr. Nizer: All right. Suppose we offer those three together, then, that one sequence and those dates, August 21—

Mr. Sawyer: Excuse me. What is the third one?

Mr. Nizer: I will give it to you.

By Mr. Nizer:

Q. August 21 is Universal's letter to you, "Please be advised we now have available for screening purposes WRITTEN ON THE WIND starring Rock Hudson, Lauren Bacall, Robert Stack and Dorothy Malone. Kindly make arrangements to screen as soon as possible."

A. Right.

Q. And this is August 21.

Now, August 24, on this date you sent a telegram, "Please advise exact availability first run

(2174)

Philadelphia for the motion picture WRITTEN ON THE WIND."

A. Right, sir.

Q. "And whether this motion picture has been licensed for first run exhibition in this city."

A. Right.

Q. And then the answer to that from Mr. Heiber, is it?

A. Yes,sir.

Q. Which is August 28, 1956, "This will acknowledge receipt of your wire. As of today WRITTEN ON THE WIND has not been sold first run Philadelphia. The availability on this picture is December 31, 1956. We will be happy to screen this release for you at your convenience."

A. Right, sir.

Mr. Nizer: Now, suppose we mark this in sequence.

(Letter dated August 21, 1956, from Mr. Ferd Fortunate to Mr. Jay Wren was marked Defendants' Exhibit 43 (Universal) for identification.

(Telegram from Mr. Jay Wren to Edward Heiber dated August 24, 1956, was marked Defendants' Exhibit 44 (Universal) for identification.

(Letter dated August 28, 1956, from Mr. E. Heiber to Mr. J. Wren was marked Defendants' Exhibit 45 (Universal) for identification.)

(2175)

By Mr. Nizer:

Q. Then there followed another telegram from you dated August 31. Now, we are down to August 31, 1956, is it? Yes. And I ask you if this is the telegram you sent.

A. Right, sir.

Q. And is this the telegram you received in response to it on September 5?

A. Yes, sir.

Q. All right. Now, the first one which is your telegram, says, "We are interested in licensing the motion picture WRITTEN ON THE WIND which you advise in your letter of August 28 has not been sold and is available December 31, 1956. Please advise us when you intend to solicit offers for this motion picture first run Philadelphia."

A. Yes.

• • •

(2193)

Q. Between the time that this correspondence began which has been offered in evidence up to this exhibit that I hold in my hand now, dated September 5, 1956, between the beginning of August and September 5 a suit had been instituted against you by Universal for payment of what

they claimed was rental due on some of these pictures, right?

A. I don't know the exact date of the suit, sir. I think it was before this.

Q. Yes, it was before this telegram.

A. Before all of this correspondence, I believe.

Q. Were you not advised on September 5, by Mr. Dana, that he—meaning Universal—had been obliged to see you for film rental of the four pictures that they had sold you, in September of '55? Weren't you so advised by him?

A. Mr. Dana would be wrong, sir. Mr. Dana received film

(2194)

rental on the first two pictures.

Q. And when you say you paid on account of two, how much money did they sue for? Let's do it that way.

A. I don't recall, sir.

Mr. Nizer: How much money was the suit for?

Mr. Adams: About $14,000.

By Mr. Nizer:

Q. $14,000. Do we agree in approximate terms that there was a suit for $14,000 for film rentals that had been begun by Universal against you? I am not trying to retry the suit, I am just asking for the fact. There was such a suit begun against you?

A. Yes, sir, I said there was.

Q. Right. And weren't you advised on September 5, 1956 by Mr. Dana that his company, Universal, had been obliged to sue for moneys on Universal Pictures which had been sold to you previously?

A. Doesn't he specify the number of pictures, sir?

Q. Now, do you want this telegram in evidence after the argument you have heard?

A. No, sir, I do not, but I think you said that he said four pictures.

* * *

(2197)

Q. Didn't you in answer to that suit in which Universal sued you for the moneys that it claimed were due file a counterclaim making charges against Universal in that suit?

A. Yes, sir.

Q. And didn't Mr. Dana in communicating with you advise you that you had filed such a counterclaim making countercharges against Universal and against him personally? Didn't he so advise you?

A. That is—let me see the wire, will you please, sir?

(2198)

You say if he so advised me? I can't remember, sir.

(The document was handed to the witness.)

A. Yes, sir.

By Mr. Nizer:

Q. And as early as September 5th—the letter you offered in evidence is subsequent, September 19th, so I am not offering a letter that answers your letter, that letter of September 19, I am leading up to it.

As early as September 5 Mr. Dana advised you that he resented, let's say, your having made charges against him which he considered dishonest charges against him personally as well as against Universal for having defrauded him and defrauded you and whatnot? Without going into the detail, that was the substance of what he was communicating to you, is that right, his charges? Is that right?

A. I don't remember the words in there, sir. May I see it?

Q. You may see again. Look, I will point to it without reading it (indicating).

Why don't you keep that there, sir. I have another copy. It may help you to answer.

A. Yes, sir. I would like to.

Q. Do you see that?

A. I don't see any word "defraud" in here, sir.

Q. What is the word?

(2199)

Filed a counterclaim in that suit which is completely without foundation and filed scurrilous charges which—

• • •

Mr. Sawyer: I would ask the whole telegram to be read now, Your Honor, and I would like to have it clear on the record that I am not withdrawing my objection to the admission of documents of this character along the lines of the argument I have made. I am reserving that, Your Honor, but it has now gotten to the point where obviously the entire telegram should be read, and I ask it be read.

• • •

(2202)

Mr. Nizer: May I read this, Your Honor, now, please?

"September 5, 1956, Mr. Dana to Mr. Sley and Mr. Wren, Viking Theatre.

Re telegram Heiber about August 31 regarding WRITTEN ON WIND, as you know, we have been obliged to sue you for film rental of the four pictures we sold you in September of 1955 and you have filed a counterclaim in that suit which is completely without founda-

(2203)

tion and filled with scurrilous charges against us and me personally. Now you ask us to solicit offers from you on WRITTEN ON THE WIND. Despite your reprehensible conduct, we will consider any offer you may care to make and will license the picture to you if your offer is acceptable, but we will expect advance payment of full film rental to avoid a repetition of our present difficulties.

P. T. Dana."

• • •

(2204)

Q. Now, this was in 1956 that suit for that money that Universal claimed was due. It came to trial and there was a judgment in favor of Universal for the full amount in 1959, three years later; is that correct?

A. I am not sure about the date. Yes, they got a judgment. I am not sure when it was.

Q. They got a judgment. Well, I will supply the date. It is May, 1959.

(2205)

A. All right, sir.

Q. And then there was an appeal after that and in 1960 it was affirmed and that is when you paid the amount of the judgment; correct?

A. I would assume that's correct.

Q. Four years later.

Now, let's get back to the 1956 period. After this exhibit which has just been read you sent another telegram to Universal still ahead of that letter of the 19th, which Mr. Sawyer offered in evidence, and this is it, is it not?

A. Right, sir.

Q. And then you received from Mr. Dana the very next day this reply, did you not, sir? This is one more of

the 10th. Let's have them complete, please, Mr. Wren. This precedes it.

All right, sir. Those are the documents exchanged between you at around that period; is that right?

A. Yes. May I see that other one, please?

Q. The 13th?

A. Yes, sir. Thank you.

Q. You are welcome.

Mr. Nizer: All right. Suppose you mark those in sequence. That is the 10th first, now the 13th and the 14th. They are all Universal.

(2206)

(Telegram dated November 10, 1956, from Mr. Wren to Mr. Dana was marked Defendants' Exhibit 47 (Unviersal) for identification.

(Telegram from Mr. Wren to Mr. Dana dated September 13, 1956, was marked Defendants' Exhibit 48 (Universal) for identification.

(Telegram dated September 14, 1956, from Mr. Dana to Mr. Wren was marked Defendants' Exhibit 49 (Universal) for identification.)

(2207)

Mr. Nizer: May I have Your Honor's permission? They are quite brief.

The Court: Yes.

Mr. Nizer: From Jay Wren to Pete Dana, Universal Film Exchanges:

> Please advise when you intend to solicit written offers and when bids will be due for a license to exhibit first run Philadelphia the motion picture WRITTEN ON THE WIND.

September 13, Mr. Wren:

> Please advise if you are soliciting written offers from other first run Philadelphia exhibitors for a license to exhibit the motion picture WRITTEN ON THE WIND. Also at what terms picture is being offered. Kindest regards.

From Mr. Dana, in reply, September 14:

> We have at least twice requested you to negotiate with us for WRITTEN ON THE WIND first run Philadelphia and I now do again. However your telegram of September 13 seems to indicate that you do not desire to do business but are simply pursuing what you deem to be a clever maneuver to manufacture evidence for your so-called "counterclaim" in order to try to avoid paying the film rental you owe us. You know that anyone

(2208)

> bona fide interested in licensing our picture would go into our Philadelphia exchange and talk business and not send endless telegrams asking ridiculous questions. I suggest you do the same. WRITTEN ON THE WIND, as all our pictures, is available to you as well as to every first-run exhibitor. The terms offered by others are none of your business.
>
> P. T. Dana.

• • •

(2209)

Q. Now, after the letter which Mr. Sawyer put in evidence there was a subsequent communication from Mr. Dana to you, was there not, after this letter? If I recall, you said you didn't recall it.

A. I don't know.

• • •

(2210)

Mr. Nizer: May this be marked first, before I read it?

(Telegram from P. T. Dana to J. Wren, dated October 1, 1956, was marked Defendants' Exhibit 50 (Universal) for identification.)

Mr. Nizer: Mr. Dana to Mr. Wren, October 1st:

(2211)

The two-week period referred to in my letter to you September 19 expires October 3. I am planning to leave town on that date and therefore will not be able to talk to you concerning matter referred to in the letter. If I don't hear from you by October 3 I shall consider that you are not interested in the showing of WRITTEN ON THE WIND first run Philadelphia.

P. T. Dana.

By Mr. Nizer:

Q. Did you write an answer to that telegram, sir, and if so, will you produce it?

A. I don't know whether I did or not, sir.

Q. Now I turn to Columbia Pictures, the picture PICNIC, which you testified to. You negotiated for this picture, didn't you, the Columbia picture PICNIC?

A. I believe we submitted a written offer for that picture, sir.

• • •

Q. On the Columbia picture PICNIC; you were invited to negotiate for that picture by Columbia, were you not?

A. I believe we were.

(2212)

Q. And then in this case you didn't wait for anybody to invite you, you sent in a letter which contained an offer, is that right?

A. I believe in the solicitation letter it says: If within five days after the screening you are interested please notify us.

Q. So you did?

A. Yes, sir.

Q. And PICNIC was available for February 29, 1956, do you recall that?

A. I would like to see the solicitation letter, please, sir.

Mr. Nizer: All right. 88.

By Mr. Nizer:

Q. Until I get the document that will demonstrate the availability date, I ask you if you on December 7, 1955, sent in your written proposal in the form of a letter.

A. If that is the date on the proposal, yes, sir.

Q. Yes, December 7, 1955.

A. Right, sir.

Q. Now, at that time, in December, 1955, you were already obligated, as we have seen this morning, to play THERE'S ALWAYS TOMORROW, a Universal picture, in February, 1956. I show you Exhibit 40, and ask you if that does not indicate

(2213)

that to you.

A. It is available February, 1956, yes, sir.

Q. So that at the time that you were sending your proposal in, in December, for a February date, which you will assume with me until I show you the document, you already had a commitment, as you put it this morning, to play a Universal picture on that date, didn't you, for not a specific date, but for that month in February?

A. Yes.

Q. As a matter of fact, you had already sent telegrams on other pictures saying that you cannot put in an offer for a picture in February or March, 1956, because you had other commitments, meaning, I suppose, the Uni-

versal commitment; hadn't you sent such telegrams to others?

A. I don't recall, sir. I would like to see it.

Mr. Nizer: 89, please, and 90.

By Mr. Nizer:

Q. I show you these photostats of telegrams and ask you if they do not refresh your recollection.

Mr. Sawyer: May I see them, Mr. Nizer?

(Mr. Nizer hands papers to Mr. Sawyer.)

Mr. Nizer: I will finish the sentence.

By Mr. Nizer:

Q. (continuing) That you were advising distributors on

(2213a)

other pictures that you had a prior commitment and therefore couldn't bid for a picture that was available either February or March, 1956.

• • •

(2214)

The Witness: ANYTHING GOES.

Mr. Nizer: HOT BLOOD is one of them, isn't it?

The Witness: HOT BLOOD.

Mr. Steinberg: What company?

The Witness: One is Paramount, the other is Columbia. HOT BLOOD and OVER-EXPOSED.

By Mr. Nizer:

Q. Can't you make that out, to save—I am trying to—

A. I am trying to find the date of when these telegrams were sent, sir, if you don't mind, please, because that is the thing that doesn't come up on here.

Mr. Sawyer: Let's see. I can usually read those.

Mr. Nizer: That's right. Mr. Sawyer can make them out even when they are invisible.

Mr. Sawyer: February 3rd, 3:00 P.M.

February 14 at 4:00 P.M.

ANYTHING GOES February 3rd, OVER-EXPOSED—

Mr. Nizer: I will take your eyesight any time.

(2215)

By Mr. Nizer:

Q. Now, Mr. Wren, doesn't that indicate to you that you were turning down invitations to negotiate or bid for other pictures because you already had a commitment to Universal in February and March as that defendant's exhibit 40 indicates?

A. No, sir, it doesn't indicate here that I had any commitment to Universal, sir, at all.

Q. I didn't say the word "Universal" is in that telegram, but I don't want to quibble with you. Didn't you say that you had another commitment for February or March in one instance?

A. The Viking Theatre is unable to submit an offer for a license to exhibit first-run Philadelphia the motion picture ANYTHING GOES which we understand is available March 22, 1956. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases.

Kindest regards.

Nothing there whatsoever about a prior commitment, sir.

Q. Read the next one?

A. The Viking Theatre is unable to submit offers for a license to exhibit first-run Philadelphia the

(2216)

motion picture HOT BLOOD which you advise is available March 15 and OVER-EXPOSED, which you advise

will be available on or about April 1st. Please continue to afford the Viking the opportunity to submit offers on all of your future releases.

Q. Now, Mr. Wren, when you said "The Viking Theatre is unable" weren't you referring to another commitment that you had as a booking, or weren't you?

A. No, I was not, sir.

Q. Oh, by "unable" you didn't mean surely physically unable to submit an offer?

A. No, sir, I didn't.

Q. What did you mean by "unable"? Didn't you mean—

A. If I was able to send the telegram I was physically able to submit offers.

Q. That's right. I am jesting. I am not being liberal with you.

Doesn't the word "unable" mean that you had another conflict because of another commitment on a picture in that month?

A. Not necessarily so. It might have been some other reason at this time.

Q. You don't know of any other reason?

A. I said there might be some other reason at this time.

(2217)

Q. Do you know of any other reason?

A. At the moment, no, sir. I would have to check the files.

Q. Well, whatever that reason was it was the same reason that was outstanding at the time that PICNIC was supposed to be played in February 1956?

A. No, sir.

• • •

Q. It was the same situation. February 1956 is the same whether it is February 1956 for Picture A, Picture B or Picture C, isn't that so?

A. No, sir.

Q. No, sir?

A. No, sir.

Q. All right, all right. We will save time. I will have to get that date for you, sir, for the record. I haven't got it yet.

Perhaps this will help you, since we haven't the record in front of us. This picture PICNIC opened February 21, 1956. You know that date because you know from

(2218)

your record of other competing theatres, pictures. With that date—

A. But you told me it was available February 29.

Q. No, the 2nd I think I said, but if I said 29 it doesn't matter. It opened in February is the only point.

A. It matters a lot, sir, in bidding.

Q. Even though you turned down other pictures for February and March, it still matters a lot?

A. It certainly does. Washington's Birthday would be in there and that is a good holiday.

Q. All right. Now, you made one other comment about this picture. You testified directly, Mr. Sawyer asked you.

Did anyone else bid on that picture?

And you said, "No, sir."

Now I ask did you make that answer to that question?

A. I may have.

Mr. Sawyer: What page?

By Mr. Nizer:

Q. What was that?

A. I may have.

Q. Well, of course you may have. My question is did you?

A. Well,—

Q. Did you?

(2219)

A. Would you please read it to me if I did?

Q. Were you asked by Mr. Sawyer—

A. I won't deny it if it is there, sir, I promise you, but I don't recall having said that. If I did, I did.

Q. That is generous of you.

My question is did you testify in answer to Mr. Sawyer that no one else had made a bid on this picture?

A. I don't recall.

Q. PICNIC.

You don't know?

A. No, sir.

Q. Well, let me read it to you.

A. Fine.

Mr. Nizer: Page 1056.

By Mr. Nizer:

Q. Mr. Sawyer said:

Did anyone else bid on that picture?

A. No, sir.

• • •

Q. Now, did you make that answer to that question?

(2220)

A. Now may I see the letter of rejection from Columbia, please?

Q. Will you please answer [illegible] question, Mr. Wren, so we don't get into wrangles? I am trying to proceed with this examination in an orderly manner.

A. I would assume it is from Columbia's letter, the reason I would make such a statement.

Q. Please answer my question, which is did you testify in answer to Mr. Sawyer's question: "Did anyone else bid on that picture?"—the answer was "No, sir." Did you make that answer?

A. Yes, sir, I did.

Q. Now, isn't that a simple way to reply. The answer is you gave that testimony?

A. Yes, sir.

Q. Now I ask you, at least having gone over the records of the defendant-exhibitors, as well as the defendant-distributors, don't you know as at the time that you testified that there were other bids made by Stanley Warner, by the Arcadia Theatre, by the World Theatre, another first-run theatre? Don't you know that?

A. I don't recall having seen that, no, sir.

Q. Don't you know that in your own pretrial statement or answer to interrogatories?

(2221)

Mr. Nizer: Which is it?

(Discussion off the record.)

By Mr. Nizer:

Q. Let me get the reference for you.

A. All right, sir.

Q. I am sorry, it will take a moment.

Let me ask the question generally so that we will see whether it refreshes your mind, and then I will have to get the document.

Don't you know that in your own papers filed by your own counsel you referred to offers that were made for this picture by other first-run exhibitors than yourself?

A. I don't actually recall, sir. It has been so long since those things were filed.

Mr. Nizer: May I proceed in the meantime and I will come back to it, Your Honor, in order not to lose time.

By Mr. Nizer:

Q. I am turning to Fox, Twentieth Century-Fox. During your association with Sley at the Viking Theatre—I am taking the date that you gave us, February 1955 to November 13, '56. That would be the period of this lawsuit, the latter part would be, not the first part.

A. Yes, sir.

(2222)

Q. Twentieth Century-Fox was one of the top producers of motion pictures in 1955 and '56, was it not?

A. I would say it was the top.

Q. All right. Twentieth Century-Fox released 45 pictures which played first-run Philadelphia during that period. Will you accept that figure subject to your checking the releases?

A. Yes, sir, subject to checking.

Q. So I don't have to go through them longhanded. All right.

Of these 45 pictures the Viking bid or negotiated for 14.

Do you want me to read them off or will you accept that?

A. I will accept those subject to checking, surely.

Q. All right, you can check them and we will save time.

A. Bid or licensed, right, sir?

Q. That's right, sir.

A. Good.

Q. Of the 14 that you either bid or negotiated for, in other words, showed an interest in, you obtained and played eight, is that correct? Or do you want me to read them off to you so you can check them? Because if you do I will.

A. Do you mean counting QUEEN OF BABYLON and ABDULLAH'S HAREM as two or one?

(2223)

Q. Well, I count them here as separate pictures: THE GIRL IN THE RED VELVET SWING, MAN IN THE GRAY FLANNEL SUIT, BIGGER THAN LIFE, LAST WAGON, TEEN-AGE REBEL, THRESHOLD OF SPACE, ABDULLAH'S HAREM and QUEEN OF BABYLON, eight. You obtained eight of those 14 that you were interested in or tried to get?

A. Yes, sir.

Q. Now, among the 45 pictures that Columbia played first-run in this territory—

A. Columbia?

Q. I beg your pardon, Fox played in this territory, which you did not make any effort to obtain by bid, negotiation or otherwise, there were the SEVEN YEAR ITCH, with Marilyn Monroe and Tom Ewell. Do you recall that picture?

A. Yes, sir.

Q. And if you look at your list of national film rental, that is a $4,879,000 picture, isn't it, a very successful picture?

A. I would say so, yes, sir, very successful.

Q. And there were among those that you showed no interest in A MAN CALLED PETER, a $4,366,000 picture, correct?

A. I will take your word for it, sir.

Q. Yes. I think they are being checked here.

And LOVE IS A MANY SPLENDORED THING, a $2,943,000 picture, is that right, that you showed no

(2224)

interest in?

A. Yes. I don't know whether—when did that open, sir?

Q. Pardon?

A. When did that open?

Q. I haven't it in front of me, sir.

Mr. Sawyer: What is it, LOVE IS A MANY SPLENDORED THING?

Mr. Nizer: LOVE IS A MANY SPLENDORED THING.

A. I think it was bid before I got there, sir. I am not sure.

By Mr. Nizer:

Q. Oh, all right. Incidentally, when I talk of Fox, if I use the short word I don't mean the Fox Theatre. I understand.

Q. That is a separate—

A. Twentieth Century-Fox.

Q. Twentieth Century-Fox, the distributor in this case.

A. Right, sir.

Q. And among those that you showed no interest in was RAINS OF RANCHIPUR, with Lana Turner and Richard Burton, which was an over $2 million national film rental picture, correct?

A. I will assume the figures are right. I don't know when RANCHIPUR was bid.

(2225)

Q. Let them check those.

A. Yes.

Q. And UNTAMED, another picture you showed no interest in, with Susan Hayward, Stewart Granger, that was also over $2 million.

Mr. Sawyer: That was before his time.

By Mr. Nizer:

Q. Was that before your time, sir?

A. I am almost positive SEVEN YEAR ITCH was, too, sir.

Mr. Young: They were both in his time.

Mr. Nizer: Yes, they were.

Mr. Sawyer: No, they were not. I am sorry.

A. They may have played in my time but they may have been bid before March 1, '55.

By Mr. Nizer:

Q. I am talking about playing.

A. Well, that might be, but I couldn't evince any interest in them unless I was there to bid on them, sir.

Mr. Sawyer: UNTAMED opened 3/11. That is conceded.

Mr. Nizer: That is right, March 11, '55 it opened.

By Mr. Nizer:

Q. And at that time the Viking was playing the Loew's

(2226)

picture HIT THE DECK?

A. Yes, sir.

Q. All right. And LOVE IS A MANY SPLENDORED THING opened in August '55, so that surely would be in your time, wouldn't it?

A. Yes, sir.

Q. Now, SOLDIERS OF FORTUNE with Clark Gable. You showed no interest in that picture. It was a $2,606,000 picture.

Will you accept those national film rentals subject to check here? They are being checked.

A. Yes, sir.

Q. You also showed no interest in DADDY LONG-LEGS, with Fred Astaire and Leslie Caron. That is a $2,400,000 national film rental.

A. I will accept your figures.

Q. Then there are others which are of lesser national film rentals: LIEUTENANT WORE SKIRTS, with Cary Grant; MAMIE STOVER, with Jane Russell, GOOD MORNING MISS DOVE, other Fox pictures that you showed no interest in during this period that we are talking about, is that correct, sir?

A. Yes, sir.

Q. Indeed, at the time that you passed up some of these last mentioned pictures you were playing THE BIG

KNIFE, which you I think testified to had only a national film

(2226a)

rental of $662,000, but you passed up pictures which had well over a million dollar national film rental without trying to bid for them or negotiate for them, correct?

A. Well, probably because of the bid due dates, sir. I don't know until I check the records.

(2227)

Q. And in your relationships with Fox, Twentieth Century-Fox Film Corporation—

A. Yes, sir.

Q. —after they had awarded to you the blockbuster THE MAN IN THE GRAY FLANNEL SUIT, did there come a time when they asked you to pay your bill of $31,950 which was outstanding which you hadn't paid?

A. They may have, sir.

Q. I show you this letter and call your attention to the fact that it is unsigned by the Twentieth Century-Fox Company to you. Did you receive that letter?

A. May I read this letter, sir?

Q. Do you want to read it out loud?

A. I think it would be very nice to let people know that we do pay some of them.

Q. Fine. It will save my throat. Go right ahead.

A. "Dear Jay:

You made an agreement with us that you were to pay us $10,650 a week to cover the guarantee on the MAN IN THE GRAY FLANNEL SUIT at the Viking Theatre. As of today's date you have paid $74,550 which covers the first seven weeks and I can't understand why you have not paid the last three weeks on this picture. May I hear from you by return mail as to why we have

(2228)

the balance due of $31,950?

Kindest regards,

Sincerely, Sam E. Diamond,

Branch Manager."

And, as you say, it is not signed.

Q. And the $31,950 is not $3000; it is $31,950?

A. Yes, sir, so I indicated.

Q. You read that very clear, very well.

Mr. Nizer: I offer it in evidence.

(Letter dated July 16, 1956, from Sam E. Diamond to Mr. Jay Wren was marked Defendants' Exhibit 51 (Twentieth Century-Fox) for identification.)

By Mr. Nizer:

Q. Now, this letter marked Defendants' Exhibit 51 asking you to pay the balance of $31,950 is typed, "Sincerely, Sam E. Diamond, Branch Manager," but there is no signature. That is what I mean.

I would like to show that to the jury. That doesn't happen to be signed.

And this is the reply that you sent to that letter, is it not?

A. Yes, sir.

Q. Would you read that, too, as long as you are doing it.

A. "Dear Sam:

(2229)

This will acknowledge receipt of your unsigned letter of July 16.

Kindest regards.

Sincerely, Jay Wren."

Q. So your only reply to a dunning letter, let's call it, for $31,950 was "This will acknowledge receipt of your unsigned letter"; is that your comment, the only letter that you sent in reply to this?

A. I don't know, sir. You asked me to read this letter. Maybe this is the only letter.

Mr. Nizer: May this please be marked?

(Letter dated July 17, 1956, from Jay Wren to Mr. Sam E. Diamond was marked Defendants' Exhibit 52 (Twentieth Century-Fox) for identification.)

By Mr. Nizer:

Q. And then the Twentieth Century-Fox Company, Mr. Diamond, retyped the letter and signed it, the same letter, asking you why you are not paying the $31,950 and put a little slip on top, and you received this, and will you please read it out loud to the Court and jury.

A. The attachment dated July 18 says:

"Mr. Jay Wren
Viking Theatre
19th and Chestnut Streets
Philadelphia, Pa.

(2230)

Dear Jay:"

Q. You don't have to read the address.

A. "In reply to your letter of July 17, I am attaching hereto signed letter of July 16.

Kindest regards.

Sincerely, Sam E. Diamond."

Q. So this time he sent you the letter and he signed it?

A. Yes, sir.

Q. Right. That was a pretty courteous reply, wasn't it?

A. It was, yes.

Q. This letter.

A. Yes, don't you think mine was, sir?

Q. Do you?

A. I certainly do.

Q. Don't you think it was rather sarcastic and snippy?

A. How could it have been, sir, when I said, "Kindest regards and sincerely?"

Q. Do you think to a letter asking you why you are not paying a bill you say, "This is to acknowledge your unsigned letter of such a date" and make no other comments—

A. No, sir.

Q. —you consider that courteous, do you?

A. I certainly do.

Q. I see.

A. More courteous than not replying to it, sir.

(2231)

Q. What is that?

A. Far more courteous than not acknowledging the letter.

Q. Do you think that this did Twentieth Century-Fox any good to get your observation that his letter was unsigned without telling him when you were going to pay the money?

A. How would I know how much good it did Twentieth Century-Fox? That's—

Q. Have you an idea? Wasn't the money that they were asking for part of the percentage of a picture that had played at your theater, wasn't it?

A. Part of this money?

Q. Yes, the $31,900 was part of the money at the box office under a percentage arrangement of that picture at the theater, wasn't it?

A. Well in—

Q. They were partners with you?

A. He neglected to mention there that there was some advertising money should have been deducted from the $31,950, undoubtedly.

Q. How much of that do you say, even your claim?

A. I don't know, sir.

Q. Well, ultimately they had to bring suit, didn't they, for that money?

A. They instituted suit, yes, sir.

(2232)

A. They instituted suit, yes, sir.

* * *

(2235)

Q. Now, Mr. Wren, you told us a few moment ago that your letter saying, "I acknowledge receipt of your unsigned letter," is courteous because at least you replied?

A. Yes, sir.

(Letter dated July 16, 1956, from Sam E. Diamond to Mr. Jay Wren was marked Defendants' Exhibit 53 (Twentieth Century-Fox) for identification.)

By Mr. Nizer:

Q. Now, to begin this question with the preceding question,

(2236)

you told us that even though you replied, "This is to acknowledge receipt of your unsigned letter," that that was courteous because it was better than no reply. Now, after you received the next letter which was signed with this little note, "I am attaching hereto the signed letter"—

A. Right, sir.

Q. —"of June 16", you didn't reply at all?

A. I don't recall, sir.

Q. Well, just think a little; you didn't, did you?

A. I don't recall, sir.

Q. Have you any copy?

I call upon Mr. Sawyer to concede that no letter was sent in answer to this.

Mr. Sawyer: I can't do that, but I will concede that I don't have such a letter.

Mr. Nizer: All right.

Mr. Sawyer: I wasn't there then and I don't know.

Mr. Nizer: Mr. Sawyer concedes he doesn't have any such letter.

By Mr. Nizer:

Q. And you don't recall any, do you?

A. No, sir, I do not.

• • •

(2237)

Q. And, therefore, so far as you can recall—and I can state that we have no such leter, so I don't think there will be much doubt about it—from July 18 when he annexed a signed letter asking for the money of $31,950 until August when suit was instituted by Twentieth Century-Fox Film Corporation for this money, you don't know of any correspondence that you sent with respect to this claim of money?

A. No, sir, I do not.

Mr. Nizer: Now, may I have the blackboard please, Mr. Smith?

I didn't read this to the jury. May I just hand it in the box to forward along?

You have seen this?

A Juror: Yes.

By Mr. Nizer:

Q. Now, of the pictures that you bid or negotiated for,

(2238)

for the Viking Theatre, we find by checking your records that there were fifteen of those that had national film rentals of over $3 million. Now, subject to your checking it—we won't stop, I hope, to do it now—but subject to your checking them you will find you had an interest in of all the pictures of all the companies fifteen that had a national film rental of over $3 million which, of course, is very good, isn't it, very high, from $3 million up; is that right?

A. Yes.

Q. So I will mark that "Viking bid or negotiated for fifteen of the defendants' pictures which it turned out had a national film rental of over $3 million."

Now, if you will look at your records or if Mr. Steinberg will be kind enough to do it for you, I want to find out how many you got and how many everybody else got of these top pictures, over $3 million, all the way up.

A. All right, sir.

Q. The Viking Theatre got two, NOT AS A STRANGER from United Artists, and THE MAN IN THE GRAY FLANNEL SUIT.

The Midtown Theatre got one. I will put this here. The Midtown which is Goldman's theater called the Midtown, they got one, and I will give you the name of it so you can check more easily, THE KING AND I.

(2239)

A. The Midtown Theatre got THE KING AND I, sir?

Q. THE COUNTRY GIRL. I misread it; the COUNTRY GIRL, right here.

A. Yes.

Q. The Randolph Theatre which is Goldman's—

Now, I think we had better put seats down just as a piece of information. Your Viking Theatre has how many seats?

A. 1017, 1017.

Q. The Midtown has how many seats?

A. 994, I believe you said, sir.

Q. The Randolph has how many seats?

A. 2020, I believe you said, sir.

Q. So the Randolph, which is twice as large as the Viking received four pictures of that caliber over $3 million?

A. May I know which four, please, sir?

Q. Yes, CAINE MUTINY, PICNIC, GUYS AND DOLLS, BRIDGES OF TOKO-RI; correct?

A. How about TEN COMMANDMENTS?

Q. At the Randolph?

A. Yes.

Q. Well, you didn't bid or negotiate for that picture. I am talking of the pictures—

A. Oh, bids or—I am sorry, you are right, sir.

(2240)

Q. Correct.

A. Yes, sir.

Q. All right. Now, one more Goldman Theatre is involved, so we will take the next. That is the Goldman's Goldman, it is called, and they got nothing.

So you had two.

How big is the Goldman Theatre, incidentally?

A. 1170 something, I think you said, sir, or 1190.

Mr. Nizer: How much?

Mr. Haviland: 1188.

Mr. Nizer: 1188? You are quite sure?

The Witness: Eighty-eight, sir.

By Mr. Nizer:

Q. Eighty-eight, is it?

A. Yes, sir.

Q. Therefore, of the Goldman theaters, Midtown got one; you got two; Randolph got four, the Goldman got

nothing. Even if you took all these together, I think you made that comment, if you took five of the three theaters, that is an average of one and two-thirds if you took them all together. That would be one and two-thirds and you got two.

Now, let's take the Stanley.

• • •

(2241)

Q. The Stanley had one, and that would be WAR AND PEACE. Stanley one.

What is the size of the Stanley in seats?

Mr. Phillips: 2932.

By Mr. Nizer:

Q. (continuing) Will you accept that, sir?

A. That is right.

Q. 2932 seats.

A. Do you mean during the period of the suit?

Q. Yes.

A. Yes.

Q. That is almost three times your size. They got one and you got two of these good pictures.

The Stanton, which is another Stanley Theatre, got one.

What is the size of the Stanton, please?

Mr. Phillips: 1373.

By Mr. Nizer:

Q. (continuing) 1373 seats. 300 seats larger than you.

(2242)

They got one, you got two of these good pictures.

A. That too is during the period of the suit, is it not?

Q. Yes.

A. Right, sir.

Q. I am limiting myself to that.

A. Yes.

Mr. Sawyer: What is during the period?

The Witness: 1373.

Mr. Sawyer: Oh, the seats, I am sorry.

By Mr. Nizer:

Q. And finally there is the third. What is it, Mastbaum, and, of course, that is zero. Nothing. And that had 4300 seats about.

All right, sir?

Now, I want to show you one other thing, but before I do that, you had twice as many of these pictures above three million as the Stanley, that had three times as many seats, and you had twice as many as the Stanton, which had 300 more seats, and you had two to nothing over the Mastbaum, which had four times as many seats as your theater.

I want to show one other thing on this. Each of the companies involved here is a different company; that is, the pictures, let us say, the four Randolph pictures,

(2243)

there is Columbia, Loew's, Paramount. In other words, they don't all come from one company. Different companies at different times, correct? These pictures that I have mentioned to you.

A. You didn't mention any, I don't know.

Q. I thought I did. Didn't I mention them, the Randolph? You asked me to read them, CAINE MUTINY.

A. Yes.

Q. That was Columbia.

A. Right.

Q. GUYS AND DOLLS is Loew's.

A. Right.

Q. BRIDGES OF TOKO-RI was Paramount.

A. Right.

What was the fourth one, sir?

Q. The fourth was Randolph, BRIDGES OF TOKO-RI, which was Paramount, and PICNIC, which is Columbia.

A. Columbia. That is two Columbias.

Q. Two Columbias?

A. Right, sir.

Q. Now, then, let us see where the others went to that you bid or negotiated for.

The Fox Theatre had three, and I will read them to you so you can check them: THE KING AND I, TALL MAN,

(2244)

BUS STOP—

A. Yes, sir.

Q. —during this period.

A. Yes.

Q. And the Fox Theatre, what are the seats?

Mr. Phillips: 2422.

By Mr. Nizer:

Q. (continuing) 2422 seats.

Then the Arcadia, which is not operated by any of the defendant exhibitors, the Arcadia is the Shapiro Brothers again, whom we are going to come back to again; the Arcadia had two, and you will observe, will you please, that the Viking had two and the Arcadia had two.

And how many seats in the Arcadia?

A. Six hundred and something.

Q. Six hundred?

Mr. Phillips: And 50.

By Mr. Nizer:

Q. (continuing 650 seats. So that theater is smaller, almost half the size of yours.

A. What were the two, sir?

Q. The two, HIGH SOCIETY and THE MAN WHO KNEW TOO MUCH. Five million six and a three million two, I think.

Now there is another one here for the Trans-Lux.

(2245)

Now, the Trans-Lux is not associated with any of the defendant exhibitors. It is neither the Goldman nor the Stanley Warner, that is another fellow by the name of Brandt, isn't it, who operates it?

A. The Trans-Lux Theatres, yes.

Q. Yes. And they had, as I see it here, one.

A. What is that, sir?

Q. TRAPESE, six million nine, one.

And that is how many seats?

Mr. Phillips: 493.

By Mr. Nizer:

Q. (continuing) 493 seats.

Now, I haven't room to write them in, but if you want the national film rentals of all the ictures I can read them off, they are known to us now: NOT AS A STRANGER six million, MAN IN THE GRAY FLANNEL SUIT three million six, CAINE MUTINY seven three, PICNIC six one, GUYS AND DOLLS six eight, BRIDGES OF TOKO-RI four three, COUNTRY GIRL six, KING AND I six five, TALL MAN three six, BUS STOP three two, HIGH SOCIETY five six, MAN WHO KNEW TOO MUCH three two, TRAPESE six nine—that is the Trans-Lux one—WAR AND PEACE four three. THE MAN WITH THE GOLDEN ARM four. They range.

Mr. Sawyer: GIANT.

• • •

(2246)

Q. If you and Mr. Sawyer have gone over this and you want to suggest one or two pictures I won't mind.

A. GIANT at the Mastbaum.

• • •

(2251)

Q. I only have one or two more questions on the averages.

If one were to mark this by the measuring yardstick of a number, the Viking would have a 2 point hundred per cent system on this.

A. I don't understand you. What do you mean the Viking would have a 2 point one hundred per cent system, sir? I don't think that is—

Q. I don't think that—let me put it this way, suppose even—and I don't for a moment say that this is correct, but I am following up some figures you gave—supposing, then, that we were to take an average, and assuming that GIANT is in, assuming that GIANT is in for the Mastbaum, not zero but 1, then the whole Stanley group averaged 1; 3 theatres, 3 pictures, an average of 1. You had 2.

(2252)

Suppose that we were to average the Goldman 3 theatres. I don't say that is right, I think each theatre is different, but let's suppose so. Then they would have an average of 1-2/3 pictures of this character that you bid or negotiated for, and you would have 2.

Now as to the others, the Arcadia would have the same. That is a non-defendant theatre. You would have twice as much as the Trans-Lux, which is a non-defendant theatre, of this type of picture, and the Fox Theatre would have a 3 to 2 ratio to you, the Fox being 2422 seats and you a thousand.

Now, even on the basis of averages, wouldn't you accept that? It is simple arithmetic, it seems to me.

A. Not without reservations, sir.

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(2253)

FIFTEENTH DAY

• • •

(2254)

JAY WREN, resumed.

CROSS-EXAMINATION (Continued)

By Mr. Nizer:

Q. Mr. Wren, you have testified on direct examination concerning a conversation that you say you had with Mr. Ricketson, an official of the Fox Philadelphia Theatre; do you recall that?

A. Yes, sir.

Q. And you suggested in your testimony, if I understood you, that Mr. Ricketson had suggested that you go to see Mr. Goldman and Stanley Warner to get some films; do you recall that testimony?

A. I believe he said: Why don't you go to see Goldman and Stanley Warner?

I said: What purpose would be served?

Q. Well, you meant by that, or didn't you, that he had suggested that you go there for the purpose of seeing if you could work out a split with them on some pictures.

A. I don't know what his purpose was, sir.

Q. Did he limit himself to Stanley Warner and Goldman,

(2255)

or did he say: Why don't you talk this over with all of the other fellows? meaning all of the first-run people in the territory.

A. My conversation was limited to this gentleman, Mr. Ricketson.

Q. Now, my question is—I know you were talking to him, but did he limit himself to Stanley Warner and Goldman?

A. Yes, sir.

Q. (Continuing) In his suggestion, or was it all the other fellows?

A. No, sir, he only mentioned those two, sir.

Q. You testified in a deposition, in which the Twentieth Century-Fox Film Company sued you for film rental, did you not?

A. I believe I did, yes, sir.

* * *

Q. Didn't you testify at page 48 of that deposition, referring to Ricketson:

(2256)

> He said: Why don't you talk to the other fellows to see what can be worked out?
>
> The words "other fellows" referred to other first run exhibitors in the territory, with this shortage of product.

A. I wouldn't know, sir, what the "other fellows" would mean.

Q. All right, let me continue with your testimony.

A. Please do.

Q. He said: Why don't you talk to the other fellows to see what can be worked out?

I said: Specifically who?

He said: Well, everybody involved.

Does that mean to you all of the first-run exhibitors, all the people who were having difficulty in the shortage of films?

A. Do you mind reading, what else did he say, please?

(2257)

He said, "Yes, and everybody else, to see if something cannot be worked out."

Does that make it clear to you that he was talking not only about Stanley Warner and Goldman but about

other first-run exhibitors in the hope that maybe by working out something among themselves, including you, the problem in the territory could be solved. Isn't that clear as to what you meant?

A. If that is what I said, that is what it means; yes, sir.

* * *

Q. My first question is: Did anybody approach you on behalf of Stanley Warner?

A. William Yurasko.

Q. And also Bernie Brooks?

(2258)

A. No, sir.

Q. Who was Bernie Brooks?

A. Bernie Brooks at that time, I believe he just came down as assistant zone manager. Prior to that he was film buyer for the Fabian Theatres out in New York.

Q. Didn't he talk to you about the working out of a split between Stanley Warner and the Viking Theatre?

A. No, sir.

Q. Did you testify in a deposition when you were asked the following questions under oath, did you make the following answers: —Page 610.

Mr. Sawyer: Which deposition, Mr. Nizer?

Mr. Nizer: In this case.

"Q. Did you have any discussion with any representative of Stanley Warner in regard to working out a split?

"A. Only a discussion that Bernie Brooks and I had one day when I had lunch with him at Wood's."

A. That is right.

By Mr. Nizer:

Q. So now you do say that Mr. Bernie Brooks of Stanley Warner did have a discussion with you at Wood's, at lunch, on this subject?

A. No, sir. At the time I met Mr. Brooks at Wood's it was

(2259)

Mr. Yurasko and Mr. Brooks. We had a very pleasant lunch, and at the end of the lunch he said, "We have to get together some time." I said, "At your convenience." I don't believe the word split was mentioned at lunch, sir.

Q. Listen to the question and the answer that you made, whether the word split was mentioned or not:

"Q. Did you ever have any discussion with any representative of Stanley Warner in regard to working out a split?

"A. Only a discussion that Bernie Brooks and I had one day when I had lunch with him at Wood's."

A. The word split eluded me in the question, because the only discussion—

Q. You mean this testimony was incorrect under oath?

A. Yes, sir; if it refers to a split, it is incorrect.

• • •

(2260)

Q. First, let us get this clear, when you answered in this deposition this question under oath: "Did you ever have any discussion with any representative of Stanley Warner in regard to working out a split," and you said, "Only a discussion that Bernie Brooks and I had one day when I had lunch with him at the Wood's," that was incorrect testimony when you gave it?

(2261)

A. Yes, sir.

Q. Do you want to take it back?

A. I certainly do, sir. It had nothing to do with that. The word split eluded me. I was with Bernie Brooks and Yurasko, and then Mr. Yurasko and Brooks on the way

out, in front, Mr. Brooks told me that we should get together some time and I said, "At your convenience."

There was no split mentioned at that conversation.

Q. And also when you said, "Only a discussion that Bernie Brooks and I had," without mentioning Yurasko, that, too, was incorrect in that respect you now tell us?

A. Now, what is that about Mr. Yurasko, sir?

Q. When you were asked, "Did you have a discussion with any representative of Stanley Warner," and you said, "Only with Bernie Brooks," and did not mention Yurasko, did you?

• • •

(2263)

Q. First, I ask you, did you understand Mr. Brooks' observations to you to mean that he was suggesting a split, whether he used that in so many words, or not?

A. No, sir, I did not.

Q. I will come back to 610. I will turn to 611, please.

"Q. Well, did he say to you that, 'Perhaps we ought to sit down and try to work out a split?

"A. He indicated that but he didn't say it in so many words."

Did you make that answer to that question?

A. Yes, sir.

Q. Now, do you want to take back your answer of a moment ago that he didn't indicate that he meant a split and you so understood it? Do you want to take that back?

A. No, sir.

Q. Well, when you made the answer, "Perhaps we ought to sit down and try to work out a split" to that question, you made the answer, "He indicated that but he didn't say it in so many words," didn't you at that time mean that he indicated a split to you?

A. No, sir.

• • •

(2271)

Q. Mr. Wren, coming back to the first conversation that I asked you about, I will have to begin again to get a clear start. When you were asked, "Did you ever have any conversation with any representative of Stanley Warner in regard to working out a split," and you replied, "Only a discussion that Bernie Brooks and I had one day when I had lunch with him at the Wood's," weren't you referring to the fact that you had such a conversation on a split with Bernie Brooks one day at the Wood's; isn't that the meaning of that answer?

A. No, sir.

(2272)

Q. Well, when you replied to:

Did you ever have any discussions concerning a split?

Only a discussion that Bernie Brooks and I had.

Didn't you mean by that answer that, I had such a discussion, but the only one I had it with was Bernie Brooks?

A. No, sir.

Q. Did you mean by your answer: Only a discussion that Bernie Brooks and I had: Only not a discussion that Bernie Brooks and I had?

A. I indicated, sir, that I did have a discussion with Bernie Brooks at the conclusion of a luncheon, when he told me we would have to get together some time and I mentioned, I believe it was: At your convenience; or words to that effect.

Q. Well, we are going to come to that, Mr. Wren.

A. Right, sir.

Q. And you have read this very carefully, haven't you?

A. I have not.

Q. Well, first I ask you, before the rest of the conversation you are telling me about, when you meet at your convenience, that is with respect to how you meet—first I ask you:

Did you ever have any discussion with any

(2273)

representative of Stanley Warner in regard to working out a split?

Only a discussion that Bernie Brooks and I had at Wood's.

Q. Didn't you mean at that time that you did have such a conversation with Bernie Brooks of Stanley Warner?

A. No, sir, I did not, I indicated, sir, the word "split" in the question eluded me at the time.

Q. What you mean is that is what you meant when you answered, but it is an incorrect answer, is that right?

A. Yes, sir, it is.

Q. And you want to withdraw that answer under oath?

A. Yes, sir, I do.

Q. All right, now, let us go on.

Then reading consecutively now:

Now, when was this?

At the conclusion of the luncheon, shortly after Bernie came here, Billy Yurasko and I and Bernie.

That is correct, that is when it took place, at the end of the lunch you talked to Bernie Brooks, where you had a luncheon with Yurosko—

A. The three of us sat at the same table.

Q. But the conversation was only with Bernie Brooks, you say?

(2274)

A. No, the three of us talked.

Q. All right.

Then the next question was—so that is correct, that was still the occasion with the three of you?

A. Yes, sir.

Q. Well, could you fix that? Was that the summer of 1956?

And you said:

Maybe later. It might have been August, something like that.

Now, was that correct, that it might have been around summer or maybe later, August, 1956?

A. Mr. Nizer, we don't have to guess. I believe it is on my expenses, the date, of both the Warwick—

Q. Indeed it is.

A. Yes, sir.

Q. Indeed it is, and I show it to you.

A. We don't need to have any discussion about it.

Q. Look at it and tell me what date in August it was.

A. May I have the original, please?

21st, I believe. I believe it is the 21st. It is hard to make out here.

Mr. Nizer: I will get Mr. Steinger to get you the original.

(2275)

Mr. Steinberg: The 21st of August.

Mr. Nizer: August 25th is the date of the expense sheet.

The Witness: No, August 21st is the date of the meeting.

By Mr. Nizer:

Q. Is the date of the meeting 8/21, refreshment re Brooks, W. Yurosko; do you see that?

A. Yes, sir, I forgot about Mr. Diamond being there too. You see.

Q. So now we are clear that it was in August, this conversation, in August, 1956, which is within the period of this lawsuit, is it not?

A. Right, sir.

Q. Now I go to page 611 and ask you whether you testified as follows, in the middle of the page:

> Well, did he say to you that, Perhaps we ought to sit down and try to work out a split?
> meaning Brooks. Did he say that to you?
>
> He indicated that but he didn't say it in so many words; and I think one night when I met you at the bar in the Warwick with Bernie Brooks, he said, We got to get together some time, and he didn't say for what.

(2276)

A. A subsequent meeting.

Q. (continuing) With Mr. Aarons.

A. In the Coach Room, when Mr. Aarons was with Mr. Brooks and I was with Mr. Blumberg of Warner Brothers, the publicity man.

Q. Now I go back. I read on the semicolon of another meeting, with a lawyer, who was asking you the questions, and someone else.

A. Yes, sir.

Q. But he first asked you:

> Well, did he—Brooks—say to you that: Perhaps we ought to sit down and try to work out a split.
>
> He indicated that, but he didn't say it in so many words.

Is that correct?

A. Yes, sir.

Q. Now, didn't you follow through that conversation and meet him at your convenience or his convenience, to sit down to discuss that; didn't you do that?

A. No, sir.

Q. Weren't you interested in pursuing that matter?

A. I felt that he wasn't sir.

Q. Were you interested in pursuing the matter?

(2277)

A. No, sir. If I was I would have gone to his office, sir.

Q. Weren't you asked the following question and didn't you make the following answer:

Mr. Sawyer: What page?

Mr. Nizer: 617, Mr. Sawyer.

By Mr. Nizer:

Q. (continuing) Well, weren't you interested in pursuing it?

I certainly was.

Did you make that answer to that question?

A. If that is what it says there, yes, sir.

Q. So you want to take back the answer you made a moment ago that you weren't interested?

A. May I hear it, sir?

Q. Just one question and answer:

Well, weren't you interested in pursuing it?

A. Pursuing what, sir?

Q. The conversation with Mr. Brooks about getting together: I certainly was.

Did you make that answer?

A. If I made it in there, yes, sir.

Q. Now, do you want to take back your answer?

A. No, sir, I do not.

Q. Listen to me before you answer. Do you want to take

(2278)

back your answer of a moment ago that you weren't interested—that you made a few moments ago when I asked you whether you were interested and you said you were not? Do you want to draw that back?

A. Yes, definitely.

Q. And then you were asked:

Well, why didn't you?

You were very interested. Why didn't you pursue it? That is, the matter of talking to him about this split.

I was waiting for Mr. Brooks to pursue it.

Did you make that answer?

A I probably did, yes, sir.

Q. The next question was:

You were giving a Gaston and Alphonse; is that it?

That is right.

Did you make that answer?

A. I was giving a Gaston and Alphonse, sir?

Q. Yes, do you know what that is?

A. Who asked me that, sir?

Q. The attorney, Mr. Aarons. Do you know what Gaston and Alphonse, that phrase, stands for?

A. No, I don't.

Q The two Frechmen who were bowing—

(2279)

A. Oh, yes.

Q. The one says, You first, my dear Gaston, and bows, and the other fellow says, You first, my dear Alphonse, they keep bowing to each other and no one goes forward.

Do you remember that? That is what you were doing. You were bowing and he was bowing and nobody did anything about it. Is that right?

A. The examiner was Mr. Aarons who didn't remember the meeting at the Warwick, is that right, sir?

Q. Have you any other thing to tell me that isn't pertinent to what I asked you about?

A. I am very sorry, sir.

Mr. Nizer: I will not move to strike it out. I am just asking you to answer my question.

By Mr. Nizer:

Q. When the examiner asked you, you were doing an Alphonse and Gaston, you knew what he meant; you were waiting for him and he was waiting for you, you were both bowing to each other, you first, you first. That was the meaning of that, wasn't it?

A. I don't remember ever bowing to Mr. Brooks, sir.

Q. No, I don't mean literally of course.

A. I see.

Q. You knew the meaning of that. You were doing nothing,

(2280)

waiting for him. That was the meaning of it, right?

A. That isn't the interpretation I place on it at all, sir, no, sir, I wasn't bowing to Mr. Brooks and Mr. Brooks wasn't bowing to me. Mr. Brooks indicated that he wanted to discuss a matter with me and he never pursued it any further. So naturally I didn't go over and ring the bell in his office to say: What do you want to talk to me about?

Q. Well, if you say you didn't mean that, let me read your answer.

A. Right, sir.

Q. Well, weren't you interesting pursuing it?

This is the possibility of working out a split with Stanley Warner.

I certainly was.

Well, why didn't you?

I was waiting for Mr. Brooks to pursue it.

You were giving a Gaston and Alphonse; is that it?

That is right.

Did you make those answers at the time?

A. If they were there I did, sir.

Q. Incidentally, you also did an Alphonse and Gaston with Ulrik Smith of Paramount on the availability after he said: You can negotiate.

(2281)

Why should I go to his office. Let him come to my office.

That also is an Alphonse and [redacted]aston, isn't it? The same kind of thing.

A. Where did I say this with Mr. Smith, sir?

• • •

(2311)

By Mr. Goffman:

Q. Mr. Wren, you have told us on your direct examination that

(2312)

the first Warner picture with which you had any concern when you came to work for the Viking was EAST OF EDEN; do you recall that?

A. Yes, sir.

Q. And, of course, for the period with which we are involved here, the last Warner picture was BABY DOLL?

A. I don't believe, sir. I don't believe BABY DOLL is in the period of the suit.

Q. Well, BABY DOLL was awarded to you before November 13, 1956, wasn't it?

A. I am not sure. I know I had the picture.

Q. Well, it was, and we will come to it, of course.

Mr. Sawyer: I think that is correct.

Mr. Goffman: That is correct.

By Mr. Goffman:

Q. Now, between EAST OF EDEN and BABY DOLL, there were approximately or exactly—I have counted them and you can check me if you will—35 Warner pictures that were available for licensing during the period of this suit; is that correct? Will you accept that figure?

A. Yes, sir.

Q. All right. Now, you had an opportunity afforded to you of making an offer on each of those pictures between EAST OF EDEN and BABY DOLL, didn't you?

(2313)

A. I would say so, yes, sir.

Q. And there were a number of Warner pictures on which you did not make an offer?

A. For one reason or another, yes, sir.

Q. Right. And, generally, it was something that you considered a good business reason for not making an offer on a Warner picture?

A. Yes, sir.

Q. You considered it to your advantage not to make an offer on those pictures where you made no offer?

A. Well, now, when I wasn't afforded a screening, it was a good reason, yes, sir.

Q. We will come to that.

A. Right.

Q. You testified about screening, but apart from that, when you made no offer, it was because you thought it was to your advantage not to make an offer?

A. Yes, sir.

Q. Now, do you remember the picture MOBY DICK?

A. Yes, surely.

Q. You had a screening of that picture, didn't you?

A. Right, sir.

Q. And Mr. Sley was with you at that screening, was he not?

(2314)

A. I believe there were two or three people with me.

Q. All right. And it had some pretty important stars. Gregory Peck?

A. Right.

Q. Remember that? And Orson Welles?

A. Well, Gregory Peck.

Q. And the director was John Huston?

A. Right, sir.

Q. And it was based on a rather well known story that all of us have read many times, I assume?

A. Right, sir.

Q. But you made no offer on that picture, did you?

A. No, sir.

Mr. Goffman: Would you mark this, please?

(Telegram from Mr. Jay Wren to Warner Brothers Pictures, dated May 15, 1956 was marked Defendants' Exhibit No. 54 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. I show you a document marked D-54 and ask you if that is the wire you sent Warner Brothers telling them that you were not making an offer on MOBY DICK?

A. Yes, sir.

Mr. Goffman: I offer it in evidence.

May I read it, Your Honor?

The Court: Yes.

(2315)

Mr. Goffman: A telegram addressed to Warner Brothers Pictures Corporation, dated May 15, 1956:

Re your solicitation letter of May 9, 1956. The Viking Theatre does not wish to submit an offer for a license to exhibit first-run Philadelphia the motion picture MOBY DICK which your office advised is available July 4 or July 10, 1956. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases.

By Mr. Goffman:

Q. Do you remember what you were playing at the Viking Theatre on July 4 and July 10, when MOBY DICK was available, as to this wire?

A. May I have the sheet?

• • •

(2316)

Q. My question was: Do you remember what was playing at the Viking Theatre on July 4 and July 10, 1956, when MOBY DICK was available to you.

A. THE MAN IN THE GRAY FLANNEL SUIT and A KISS BEFORE DYING started on the 11th.

Q. So that you could have played MOBY DICK in place of KISS BEFORE DYING on July 11, couldn't you?

A. Oh, yes.

Q. And MOBY DICK, by the test that you have established on national film rent, had a national film rent of over four and a half million dollars, didn't it?

A. I will accept that, if that is what you say it is.

Q. And KISS BEFORE DYING had a national film rent of only $574,000.

A. Yes, but circumstances at the time the wire was sent—

Q. And yet you made no offer to play MOBY DICK at the Viking Theatre on its availability?

A. I said, yes.

Q. All right, now, as a matter of fact, a July 4th date is a pretty advantageous date, isn't it?

A. Yes, sir.

Q. And MOBY DICK was available to you on July 4th also,

(2317)

wasn't it?

A. 4 or 10 I sent the wire.

Q. So that you could have played it on July 4, 1956?

A. Yes, sir.

Q. And you could have ended your engagement of GRAY FLANNEL SUIT in time to play MOBY DICK on July 4, 1956, couldn't you?

A. Yes, sir.

Q. But you didn't do so?

A. No, sir, because this was—we are speaking about May, are we not, when this was bid?

Q. You could have—answer my question, you could have ended your engagement?

A. I said I could have played it.

Q. And you testified here in answer to His Honor's question that you would have liked to end your engagement of GRAY FLANNEL SUIT a week or two earlier.

A. Right, sir.

Q. And at that time, if you had done that, you could have played MOBY DICK, on July 4?

A. Yes, sir, but by this time MOBY DICK is gone, sir, awarded to someone.

Q. Well, now, do you always bid on pictures only when you are already taking your last picture off? Don't you bid for

(2318)

them in advance?

A. I say perhaps at the time the MOBY DICK bid was due perhaps we bid on another picture instead of that one. We did not bid on MOBY DICK.

Q. Well, but you didn't say in your wire that you were committed to another picture, did you?

A. No, sir.

Q. You said you didn't want to bid on MOBY DICK.

A. That is right.

Q. And whenever you have a commitment that prevents you from bidding you say so in your wire, don't you?

A. Usually.

Q. And you didn't in this case?

A. No, sir.

Q. Now, of course, a July 4th weekend is a very valuable weekend?

A. I think I have conceded that, sir.

Q. (Continuing) For an exhibitor as well as a distributor?

A. Right, sir.

Q. And you really did not make a very wise decision in not bidding for MOBY DICK, did you?

A. I don't know, sir. I don't know else I bid for for July 4th.

(2319)

Q. But there is nothing you now recall?

A. No, not at this moment, no, sir.

Q. And, as a matter of fact, there was another Warner Brothers picture that was available for July 4th, 1956, wasn't there?

A. I don't recall, sir.

Q. That picture was SANTIAGO, do you remember that?

A. Yes, sir.

Mr. Goffman: Will you mark this.

(Letter from Jay Wren to Charles Beilan, dated June 1, 1956 was marked Defendants' Exhibit 55 (Warner Bros.), for identification.)

By Mr. Goffman:

Q. I show you D-55. Is that your letter declining to make an offer on SANTIAGO?

A. Yes, sir.

Mr. Goffman: I offer it in evidence, Your Honor, and may I read it?

The Court: All right.

Mr. Goffman: This is dated June 1, 1956:

This is in reply to your solicitation letter of May 28, 1956.

In this connection, this is to advise you that the Viking Theatre does not wish to submit an

(2320)

offer for a license to exhibit first-run Philadelphia the motion picture, SANTIAGO, which your office advised was available July 4, 1956.

Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases.

Q. Now, that was a picture with Alan Ladd?

A. Yes, sir.

Q. And he was a pretty well known star, wasn't he?

A. Right, sir.

Q. So there are two pictures that you could have had for that July 4, 1956, weekend but made no offer for them?

A. I made no offer for the picture. Whether I could have had them or not was in the hands of Warner Brothers, not whether—

Q. Right, but you certainly couldn't have them if you made no offer for them.

A. Right, sir. It was pretty evident.

• • •

(2321)

Q. By the way, the national film rental on SANTIAGO was also considerably larger than KISS BEFORE DYING, wasn't it?

A. I am not sure, sir.

Q. I have $1,392,000 for SANTIAGO; is that correct?

The Witness: Is that correct, Mr. Sawyer?

Mr. Sawyer: Yes.

By Mr. Goffman:

Q. Whereas KISS BEFORE DYING was only $574,000.

A. Something like that.

Q. Now, there were other Warner Brothers pictures on which you made no offers, isn't that right?

A. I would say so, yes, sir.

Q. Now, one of them was OUR MISS BROOKS, with Eve Arden. You didn't consider that a very important picture, did you?

A. I don't know, sir. I don't know how we—did I send a wire? I must have had some communication.

Q. Well, I would like to know if you did, because I thought you thought so little of this picture you didn't even send us a wire declining to bid on it. Do you recall that?

A. No, I don't.

Q. You don't recall that you didn't even notify us that you weren't going to make an offer on this picture?

A. I don't recall, no, sir.

(2322)

Q. Well, if you have a wire or letter on it I would, of course, like to see it.

Now, there was another Warner Brothers picture on which you made no offer called THE SEARCHERS. Do you remember that?

A. John Wayne.

Q. John Wayne.

A. Right, sir.

Q. That was a fairly important picture, wasn't it?

A. I would say so.

Q. And it had a national film rent of over four million dollars; isn't that right?

A. I am not sure. I haven't got the list in front of me.

Q. Well, would you like to get it?

Mr. Sawyer: I have it. That is right.

Mr. Goffman: $4,169,000.

Mr. Sawyer: Yes.

The Witness: Right, sir.

Mr. Goffman: Will you mark this?

(Telegram from Jay Wren to Charles Beilan, re THE SEARCHERS, was marked Defendants' Exhibit 56 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. Is that the wire you sent declining to make an offer

(2323)

on THE SEARCHERS?

A. Yes, sir.

Mr. Goffman: I offer it in evidence and may I read it, Your Honor?

The Court: All right.

Mr. Goffman:

Re your solicitation letter of April 23, 1956, the Viking Theatre does not wish to submit an offer for a license to exhibit first-run Philadelphia the motion picture THE SEARCHERS which your office advised is available May 26, 1956. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases. Kindest regards.

By Mr. Goffman:

Q. Now, as we said a moment ago, when you decided not to make an offer you thought it was to your advantage not to do so; isn't that right?

A. I said that, sir, yes.

Q. Now, do you remember the picture REBEL WITHOUT A CAUSE?

A. James Dean.

Q. James Dean.

A. Yes, sir.

Q. That was also a picture that, by your hindsight test,

(2324)

produced a fairly substantial film rent, $3,675,000. Do you remember that?

A. Yes.

Q. Did you make an offer on that picture?

A. I don't recall, sir.

Mr. Goffman: Will you mark this?

(A telegram from Jay Wren to Charles Beilan, dated October 13, 1955, was marked Defendants' Exhibit 57 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. I show you D-57 and you if that is your wire declining to make an offer on that Warner Brothers picture?

A. Yes, sir.

Mr. Goffman: I offer it in evidence.
May I read it, Your Honor?

The Court: Yes.

Mr. Goffman: It is dated October 13, 1955. This is to Warner Brothers.

Re your solicitation letter of September 29th. Due to a prior commitment, namely, GIRL ON THE RED VELVET SWING, the Viking Theatre is unable to submit an offer for a license to exhibit first-run Philadelphia the motion picture REBEL WITHOUT A CAUSE which you advise is available October 29th.

(2325)

Please continue to afford the Viking Theatre the opportunity to submit offers for all of your future releases. Kindest personal regards.

By Mr. Goffman:

Q. So in this telegram you advised Warner Brothers that you had a commitment already to play GIRL ON THE RED VELVET SWING at the same time as REBEL WITHOUT A CAUSE?

A. That is what I said, sir.

Q. And, of course, that is what you meant—not only said that, but that is what you meant to say?

A. Yes, sir.

Q. Now, isn't it a fact that you did not have RED VELVET SWING, the GIRL ON THE RED VELVET SWING awarded to you at the time that you wrote this telegram?

A. I don't know, sir.

Q. Well, may be I can show you some documents that will help you.

• • •

Mr. Goffman: Will you mark this.

(Letter from Jay Wren to Sam Diamond, dated October 13, 1955, consisting of two pages, with two documents attached, was marked Defendants' Exhibit 58 (Warner Bros.) for identification.)

(2326)

By Mr. Goffman:

Q. Now, I show you D-58 and ask you if that is the offer you made for the picture GIRL ON THE RED VELVET SWING?

A. Yes, sir.

Q. And that is dated October 13, 1955?

A. Yes, sir.

Q. Which is exactly the same date as the wire you sent Warner Brothers, on October 13, 1955; isn't that right?

A. At what time, sir?

Q. Well, this is 2:51 P.M.

A. It is possible.

Q. I now show you Exhibit D-59, which is the acceptance from your offer for GIRL ON THE RED VELVET SWING, and that is dated October 17, 1955?

A. This doesn't mean anything, Mr. Goffman.

Q. It doesn't mean anything?

A. No, sir. As late as yesterday—

Mr. Goffman: Do not tell me about yesterday. Will you mark this.

(Acceptance of bid for GIRL ON THE RED VELVET SWING, dated October 17, 1955, was marked Defendants' Exhibit 59 (Warner Bros.) for identification.)

By Mr. Goffman:

(2327)

Q. Now, you are saying that it doesn't mean anything that Twentieth Century-Fox sent you an acceptance on October 17, 1955—

A. No, sir.

Q. —telling you that your bid had been accepted.

A. It is only confirming it.

Q. It is only confirming it?

A. Yes, sir.

Q. Now, do you have any other kind of confirmation except this written confirmation that the picture has been awarded to you?

A. Not to my knowledge, but invariably, with Twentieth Century—

Q. Not to your knowledge. Now, do you have?

A. No, sir.

Q. You would know, wouldn't you?

A. I certainly would, and I am trying to explain to you, as late as yesterday—

Q. I don't want to know about yesterday.

A. —with Twentieth Century-Fox—

Mr. Goffman: Just a moment, please.

By Mr. Goffman:

Q. All I want to know at this moment is about GIRL ON THE RED VELVET SWING.

(2328)

A. I am trying to explain GIRL ON THE RED VELVET SWING, Mr. Goffman.

Q. Just answer my question.

A. With Twentieth Century-Fox invariably you know before any written notice.

Mr. Goffman: Your Honor, I object to anything that is invariable or anything that happened yesterday. I want to examine him on this picture.

The Court: Well, you ask him a question.

By Mr. Goffman:

Q. Now, will you answer my question.

When you said that this document, D-59, doesn't mean anything—

A. Not with respect to that wire, does not, sir.

Q. I am not talking with respect to this wire, I am talking about with respect to this offer.

A. Right, sir.

Q. D-58. On October 13, 1955, you made an offer for GIRL ON THE RED VELVET SWING to Twentieth Century-Fox.

A. I have said that, sir.

Q. And you had an acknowledgement accepting your offer dated October 17, 1955, which is four days later, which you probably received the following day, which would make it five days later, isn't that right?

(2329)

A. That is right, the confirmation is right.

Q. So that on October 13, when you sent that wire to Warner Brothers, telling them that you were already committed on a picture, GIRL ON THE RED VELVET SWING, it is not true that you had a commitment from Twentieth Century-Fox on that picture?

A. It is true. Twentieth Century-Fox had told me I had the picture. I wouldn't send out telegrams if I didn't have pictures.

Q. I see. In other words, at the time you sent this offer in on October 13th you already knew that you had the picture?

A. No, I didn't say that, once the offer was submitted the picture was awarded in a very short time.

I tried to explain to you, as late as yesterday, a picture was awarded to me in a half hour after the bid was submitted. Now, I would get a confirmation on that in four or five days.

Q. I see. So that you knew before you got this acknowledgement from Twentieth Century-Fox that GIRL ON THE RED VELVET SWING was going to be awarded you?

A. Certainly. I believe you told me about BABY DOLL before I had a written confirmation.

(2330)

Q. That is right, but you didn't get a written confirmation until this one dated October 17?

A. Evidently not, no, sir.

Q. And you didn't sign a contract until after this confirmation?

A. Probably.

Q. Probably not?

A. I said probably not.

Q. It is a fact, is it not, that the Warner picture REBEL WITHOUT A CAUSE by your test of hindsight had a $3,675,000 national film rent, whereas GIRL ON THE RED VELVET SWING only had a $1,177,000 national film rent?

A. I will accept your figures, yes, sir.

Q. And yet you made no offer on REBEL WITHOUT A CAUSE?

A. Already I explained to you why I couldn't make an offer.

Q. All right, you have explained it, but you made no offer, did you?

A. I have said I didn't make an offer, sir.

(2331)

Q. Now, do you remember the Warner picture the COURT MARTIAL OF BILLY MITCHELL?

A. Yes, sir.

Q. Now, that was a pretty good picture too, wasn't it?

A. Gary Cooper, I believe.

Q. Gary Cooper, Ralph Bellamy, Charles Bickford.

A. Gary Cooper.

Q. Its director was Otto Preminger, rather well known.

A. Today, yes, sir.

Q. Don't you think he was well known then?

A. No, sir.

Q. You don't think so?

A. No, sir.

Q. He is just a Johnny-come-lately?

A. Well, I think we have shown, sir, that directors without casts, without story, they don't mean a great deal, sir. I don't think anybody in the room has ever purchased a ticket to see a director's work.

Mr. Goffman: I ask that that be stricken, Your Honor.

Mr. Sawyer: He asked him about it.

By Mr. Goffman:

Q. But BILLY MITCHELL was a pretty good picture, wasn't it?

A. Yes, sir.

(2332)

Q. And you were not able to attend the original screening of that picture, were you?

A. It is quite possible.

Q. And Warner Brothers set up a special screening for you to see that picture, is that right?

A. They may have.

Q. Well, now, I will show you this—

Mr. Sawyer: May I see it?

Mr. Goffman: Yes (handing).

By Mr. Goffman:

Q. I show you this letter from our file dated November 28, 1955, inviting you to a screening on December 1, 1955, and call your attention to this particular memorandum written on that, and see if that refreshes your recollection.

A. It is possible.

Q. All right. In other words, you are not sure that you had a special screening, but it is possible that one was specially set up for you?

A. I saw the picture, yes, sir.

Q. And this memorandum doesn't refresh your recollection that it was specially set up for you, does it?

A. No, sir.

Q. But you did see the picture?

A. Yes, sir.

(2333)

Q. Now, you made no offer for the COURT MARTIAL OF BILLY MITCHELL, did you?

A. I don't recall. I don't know.

Q. Well, you have a pretty good recollection of most of the pictures on which you have made offers here, don't you?

A. After reading that I could have very well said yes, because on there it says: No, wire.

Now, I could have said that, sir. I don't recall.

Mr. Goffman: All right. We will refresh your recollection.

Will you mark this.

(A telegram from Jay Wren to Charles Beilan, dated December 5, 1955, was marked Defendants' Exhibit 60 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. I show you D-60, and ask you if that isn't your wire declining to make an offer on the Warner Brothers picture the COURT MARTIAL OF BILLY MITCHELL.

A. What date is this? December 5th what?

Q. December 5th.

A. What year?

Q. 1955.

A. Yes.

(2334)

Q. All right. Your answer is yes?

A. Yes.

Mr. Goffman: I offer it in evidence and would like to read it, Your Honor.

The Court: All right.

Mr. Goffman: December 5, 1955:

Due to a prior commitment the Viking Theatre is unable to submit an offer for a license to exhibit first run Philadelphia the motion picture COURT MARTIAL OF BILLY MITCHELL which you advise is available December 28th. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases. Kindest regards.

Jay Wren

By Mr. Goffman:

Q. You said in your wire that it was due to a prior commitment. Do you remember what that commitment was?

A. I do not, no, sir.

Mr. Sawyer: Excuse me. I am sorry.

Mr. Goffman: Yes.

By Mr. Goffman:

Q. Do you remember what that commitment was?

A. No, I do not.

Q. Now, what did you play on the availability of the

(2335)

COURT MARTIAL OF BILLY MITCHELL?

A. SECOND GREATEST SEX.

Q. That was the first of those four Universal pictures that you have been talking about here?

A. Yes, sir.

Q. Right. Now, do you remember a picture called HELL ON FRISCO BAY, which was also called HELL ON THE DOCK at some time?

A. I believe so.

Q. And you were invited to a screening of that picture?

A. Yes, sir.

Q. And you attended the screening?

A. I probably did.

Q. Well, you did, didn't you?

A. I probably did. I saw the picture.

Q. You made no offer to Warner Brothers for the picture, did you?

A. I don't recall having made one.

Mr. Goffman: Will you mark this.

(A telegram from Jay Wren to Charles Beilan, dated November 23, 1955, was marked Defendants' Exhibit 61 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. I show you D-61, and ask you if that isn't your wire

(2336)

where you declined to make an offer on the picture HELL ON THE DOCK or HELL ON FRISCO BAY, as it was later called?

A. Yes, sir.

Mr. Goffman: I offer it in evidence and would like to read it, Your Honor.

The Court: All right.

Mr. Goffman: Due to a prior commitment the Viking Theatre is unable to submit an offer for a license to exhibit first run Philadelphia the motion picture HELL ON THE DOCK which your office advises is available January 4th or 28th. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases.

By Mr. Goffman:

Q. You didn't even say "Kindest regards" that time.

A. I didn't.

Q. No.

What was it that was your prior commitment that prevented you making an offer on that picture?

A. ALL THAT HEAVEN ALLOWS with Rock Hudson and Jane Wyman.

Q. That is the second of the four Universal pictures we have been talking about here, is that right?

A. Yes, sir.

(2337)

Q. Now, you were invited to a screening of HELEN OF TROY, weren't you?

A. Yes, sir.

Q. And you went to that screening?

A. I saw the picture.

Q. And you saw the picture, and you made an offer for that picture?

A. Yes, sir.

Q. And that offer was to start approximately on availability, wasn't it?

A. I don't recall, sir.

Q. Well, I will show you P-41, which was the exhibit you put in the record on this picture, and see if it doesn't say that.

A. Minimum of three weeks, starting approximately on availability.

Q. What was the availability for the Warner picture HELEN OF TROY?

A. I don't recall, sir.

Q. Suppose I were to tell you it was on the schedule for early in February, 1955, would that refresh your recollection?

Mr. Sawyer: What schedule?

(2338)

Mr. Goffman: On the Warner release schedule.

The Witness: May I see the Warner release schedule?

By Mr. Goffman:

Q. Supposing I were to tell you, would that refresh your recollection?

A. No, it would not.

Q. It would not? You did make an offer for this picture, didn't you?

A. Right, sir.

Q. And you made it approximately on availability?

A. Right, sir.

Q. Is that right?

A. Yes, sir.

Q. So that when you made it you knew what that availability would be?

A. Did I indicate so, sir?

Q. You look at it.

A. I don't see any availability date in here, Mr. Goffman.

Q. I do not either. Well, that is what I am asking.

May I see the competitive bid offer, the request for offer, the competitive bid application, whatever you term it?

(2339)

Mr. Goffman: May we have it?

(Mr. Sawyer hands paper to Mr. Goffman.)

Mr. Goffman: May I take this off?

Mr. Sawyer: Yes.

By Mr. Goffman:

Q. Is that the letter you were asking for?

A. Yes, sir.

Q. Does that refresh your recollection as to the availability of that picture?

A. No, sir, it does not. There is nothing in here about availability, Mr. Goffman.

Q. I see.

May I have it?

A. Yes.

Mr. Goffman: Will you mark this, please?

(A document was marked Defendants' Exhibit 62 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. I call to your attention this pencil notation on D-62 and ask you in whose handwriting that is.

A. It says 2/11/55, W-something, 11:55.

Q. Doesn't that refresh your recollection as to the date of the availability of that picture?

A. No, sir, it is not my handwriting.

(2340)

Q. This is your letter from your file, isn't it?

A. I don't question that, sir.

Q. You did know at the time you made your offer what the availability of that picture was?

A. I may have, sir, but I would like to see where the availability is indicated on any of this correspondence you have given to me.

Q. Mr. Wren, you made an offer for this picture and you said that you would play it approximately on availability, didn't you?

A. Right, sir.

Q. And when you made that proposal to play it on approximately availability you knew in your own mind what that date was going to be.

A. Now, how would I know it, Mr. Goffman?

Q. Well, you mean to say you would play it any time, whether it was January, or March, or December, or two years later, when you made your offer?

A. Some of the defendants play pictures at will, sir.

Q. Mr. Wren, will you answer my question and not tell me what other people do.

A. I never played a picture two years later, Mr. Goffman, as you well know. I have never played a picture five weeks later or six weeks later.

(2341)

Q. Well, won't you agree with me, then, that when you made the offer to Warner Brothers on HELEN OF TROY, you said you would play it approximately on availability, you knew—

A. We must have had some indication, I will concede that. Now, sir, I am not going to bid on a picture for September, and I say I have seen no correspondence with an availability date, sir.

Q. All right, but you will concede that when you made the offer you knew what the availability was.

A. I am not going to concede any more than I have said, sir.

Q. Isn't it a fact that you would not make an offer on a picture if you did not know its date of availability; isn't that a fact?

A. Nine times out of ten. I would say ten times out of ten I would like to know when the picture is available, yes, sir.

Q. So that in this case also, when you made your offer, you knew when it was available, isn't that right?

A. I haven't indicated that I have, sir.

Q. But isn't it a fact that you knew when it would be available?

A. We undoubtedly did know something about it, Mr. Goffman, I have said it.

Now, wasn't it in fact available on February 11th or

(2342)

February 12, 1955?

A. I wouldn't know, Mr. Goffman. Your letter says nothing about it.

Q. I am not asking you about a letter, I am asking you whether that isn't a fact, when you bid for that picture HELEN OF TROY, you knew that it would be available February 11, 1956?

A. I may have.

Q. Right.

Now, I show you a Warner release schedule, a printed release schedule, on which appeared the picture HELEN OF TROY, with a notation of release date February 11, 1956.

A. Did you get this from my files, Mr. Goffman?

Q. I am showing you something that is not from your files, it is from our files. I ask you to look at that and tell me whether that doesn't refresh your recollection that February 11, 1956, was the release date?

A. Yes. That is what it says.

Q. Right. And the notation in pencil on this letter, D-62, your file, also has February 11, 1956, written in pencil on it, doesn't it?

A. Yes, it does. I didn't deny it. I said it had it on there, sir.

(2343)

Q. So can't we agree then that February 11, 1956 was the release date, the availability date of HELEN OF TROY?

Mr. Sawyer: We could have agreed to that 15 minutes ago.

Mr. Goffman: All right. Then we have agreed to it.

By Mr. Goffman:

Q. Now, what did you play at the Viking Theatre on February 11, 1956?

A. You mean as a result of not getting HELEN OF TROY?

Q. Not a result of anything, just answer my question. What did you play on February 11, 1956?

A. THERE IS ALWAYS TOMORROW.

Q. And that was the last three days of that engagement, wasn't it, the last two days, isn't that right?

A. February 11 was the last two days? No. On February 11 I was completing ALL THAT HEAVEN ALLOWS.

Q. That is right. And during the period for which you made an offer for HELEN OF TROY beyond that what were you playing?

A. I opened THERE IS ALWAYS TOMORROW on the 14th.

Q. Yes, on February 14, 1956, isn't that right?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

(2344)

Q. And you played that until March 2, 1956?

A. Yes, sir.

Q. Isn't it a fact therefore that if HELEN OF TROY had been awarded to you you couldn't have played it at the Viking Theatre?

A. It is not.

Q. On availability?

A. It is not.

Q. It is not?

A. No, sir.

Q. Now, you did play the third Universal picture immediately following the first two, didn't you?

A. Yes, sir.

Q. And you had acquired all four Universal pictures at exactly the same time by separate contracts?

A. We have said that repeatedly, sir.

Q. Right. Your negotiations covered those pictures showed on the memorandum that has been introduced here as availabilities of December, January, February and March, didn't they?

A. You mean the memorandum that says November, Thanksgiving?

Q. Yes.

A. Do you mean that is commitment?

(2345)

Q. I didn't ask you whether that is a commitment.

A. You know we weren't committed to play those pictures at any time on Universal contracts.

Q. Mr. Wren, will you just answer my question.

A. I am telling you we were not committed to play the pictures on any given date, the contracts specifically say, even the Court has said that, sir.

Q. Will you please answer my question.

A. I have answered your question.

Q. My question is whether at the time you negotiated for those four Universal pictures you did not have availability stated orally on memoranda—

A. No, sir.

Q. Now, just a moment. I haven't finished my question yet. That the first would be December, the second January, the third February, and the fourth March.

A. Is that what the memorandum says?

Q. Isn't that what the memorandum says?

A. Is that what it says, sir?

Q. Isn't that what it says?

A. Not the one I had, sir.

Q. Let us see the memorandum.

Suppose we look at this for a moment. This is another copy of the same thing.

(2346)

Mr. Sawyer: I think we will have to have it, because it is not the one I had.

Mr. Goffman: Do you have the one that you offered in evidence?

By Mr. Goffman:

Q. Now, this is D-42. Isn't it a fact that this memorandum—and if Mr. Sawyer will permit it I will stand here, so we can both look at it—has opposite the first picture December, 1955, and opposite the second picture January, 1956, and opposite the third picture, February, 1956, and opposite the fourth picture, March, 1956.

A. That is what is on the memorandum.

Q. Isn't it right?

A. Yes, sir.

Q. All right. And that is on D-42.

A. Pardon me. Doesn't it also say something else on the memorandum, Mr. Goffman?

Q. Well, it says a lot of things. Just answer my question.

A. What is on the date up there besides December that you mentioned?

Q. Will you please just answer my question.

A. I would like to, Mr. Goffman. I would like you to read the whole thing, please.

Q. When I ask you a question you will answer. This memorandum

(2347)

has been discussed at great length. I have just asked you a question that you have answered. Now let me ask you another.

A. Right, sir.

Q. Do you remember when you testified in direct examination some time ago for Mr. Sawyer here, you discussed these four pictures and these dates that were set forth on the exhibit. That was then offered in evidence. Do you remember that?

A. Among other things, yes, sir.

Q. And you also remember that you said that that memoranda had December typed on it for the first picture, December, 1955, that they told you that they might be able to make it available to you as early as Thanksgiving?

A. I don't recall saying "might."

Q. Well, did they indicate that to you?

A. They said November 16th or Thanksgiving, sir.

Q. Now, it was Thanksgiving, you say?

A. November 16th or Thanksgiving, sir.

Q. Or Thanksgiving?

A. Right, sir.

Q. I see. Didn't you then, when they said that to you, complain that if you had to play SECOND GREATEST SEX on Thanksgiving it couldn't last long enough into January, and therefore you would have a gap in your playing of these four

(2348)

pictures, didn't you say that?

A. Did I?

Q. Well, didn't you, don't you recall?

A. I don't recall, no, sir.

Q. All right, let me read your answer to you from page 925 of this trial. I start at the bottom of the page:

> We told Mr. Dana that we would not give up our right to bid for motion pictures—do you remember that—because of this or any other deal that we made. If we saw suitable product we were going to make offers for it.

A. That is right, sir.

Q. And we indicated that by playing a picture on Thanksgiving, on the calendar, on the SECOND GREATEST SEX, which we referred to at the time as the poor man's SEVEN BRIDES FOR SEVEN BROTHERS, that we would have an open playing time, and we would not lock ourselves out on the bidding for other product.

Did you say that?

A. I certainly did, sir.

Q. And then you were asked: Why would you have open playing time?

And your answer was: Because the SECOND GREATEST SEX on paper, with this cast, didn't look like it could play

(2349)

from Thanksgiving through January, a period of five or six weeks.

Did you say that?

A. I was wrong. Through January would be a period of about 12 weeks—or 9 weeks, would it not?

Q. You were wrong when you said that?

A. Through January would be nine weeks. The period of time I was wrong about, sir.

Q. Right. But you didn't say that there would be any gaps in your playing time as to any other picture, did you?

A. Why, was that a mistake, sir? I don't understand.

Q. I say you didn't say that, did you?

Did you say that there would be any gaps, Mr. Wren?

A. I said exactly what it says there.

Q. Do you understand my question?

A. I didn't say now that there wouldn't be any gaps between March and April or June and November. If that is what you mean, no, I didn't say anything about any gaps. Over and above what I said I did not say anything about any gaps.

Q. And the only gap that you indicate in these four Universal pictures which we were then talking about was the gap that would happen between SECOND GREATEST SEX and ALL THAT HEAVEN ALLOWS, if it were moved up to Thanksgiving; isn't that right?

(2350)

A. And I indicated further that we were not going to be foreclosed from bidding—

Q. Just a minute.

The Court: Let him finish.

The Witness: We were not going to be foreclosed from bidding is indicated in the same thing there. So there was no definite date on these pictures. As you well know, there are no dates in the contract on those pictures.

(2351)

Q. The only gap you indicated in your testimony in these four Universal pictures was the gap that would occur if the first picture were moved up to Thanksgiving instead of in December. Isn't that your testimony?

A. Not if the first picture was moved up. The first picture was supposed to be November 16th or Thanksgiving.

Q. I will accept that correction. The only gap you testified to when you were testifying about these four pic-

tures was that between the Thanksgiving opening for the first picture and the January availability for the second picture you could not play THE SECOND GREATEST SEX for that long period of time. Isn't that the testimony here?

A. We did not believe we could play it for that length of time, that is right, and we were going to continue to submit offers because we were not held to any availability on this picture.

Q. You said that twice.

A. All right then, why did you ask it?

Q. Will you just answer my question. My question is: When you testified on your direct examination as to these four pictures the only gap that you refer to in playing time was the gap between SECOND GREATEST SEX and ALL THAT HEAVEN ALLOWS—

A. We were discussing SECOND GREATEST SEX, weren't we?

(2352)

Q. Will you wait until I am finished.

A. I will be happy to.

Q. I am going to have to repeat it again.

A. Go right ahead, sir.

Q. In your direct testimony the only gap that you testified to in these four pictures was the gap between THE SECOND GREATEST SEX and ALL THAT HEAVEN ALLOWS, because THE SECOND GREATEST SEX according to your testimony was to open on Thanksgiving and that was a long period before you could start playing ALL THAT HEAVEN ALLOWS. Isn't that correct?

A. I don't remember HEAVEN ALLOWS getting into this discussion. You are putting it in. We were talking about the SECOND GREATEST SEX which was to open November 16 or Thanksgiving. We told Mr. Dana, as it indicates there, exactly what we said and it pertains

to SECOND GREATEST SEX. It doesn't say anything about the other three pictures being pushed one way or another.

Q. But it is a fact you testified that if SECOND GREATEST SEX opened at Thanksgiving as you say they told it would, you would have a gap in playing time because it couldn't run through January.

A. That is right.

Q. You did not testify at that time when you were talking about these pictures about any other gaps in playing time,

(2353)

did you?

A. I wasn't asked about any other gaps.

Q. You did not testify to any, did you?

A. No, sir.

Q. Now, HELEN OF TROY the picture which you bid for Warner Bros., was during the period in which the Viking in fact played successively those four Universal pictures which extended from December 23, 1955, through March 23, 1956, with NEVER SAY GOOD-BYE. Isn't that a fact?

A. Yes, sir.

Q. Although you had said in the case of the COURT MARTIAL OF BILLY MITCHELL, HELL ON FRISCO BAY, that you had prior commitments, you nevertheless attempted to make an offer on HELEN OF TROY during the same period of time that, in fact, these four Universal pictures were playing. Isn't that right?

A. Mr. Goffman—

Q. Isn't that right?

A. HELL ON FRISCO BAY, which you mentioned, sir, I wouldn't play HELL ON FRISCO BAY if I had a choice of playing HELL ON FRISCO BAY or Rock Hudson and Jane Wyman. It is just ridiculous.

Q. Is that what you said in your letter of rejection?

A. No. I said due to our prior commitment, and I have explained to you the prior commitment was ALL THAT HEAVEN ALLOWS,

(2354)

sir.

Q. Whenever you don't want to play a picture because of its quality, you have no hesitation in saying, "We do not wish to submit an offer on this picture," do you?

A. I think our correspondence indicates that, sir.

Q. When you don't want to play it because you have a prior commitment you say, "Due to a prior commitment we do not want to make an offer."

A. And sometimes we give the name of the prior commitment.

Q. You have regular forms of telegram for each situation, don't you?

A. Sometimes I change them.

Q. But there are generally basic forms, isn't that right, and you follow them all the way through?

A. Yes, sir.

Q. And those forms were prepared, I assume, in consultation with your counsel?

A. Now, Mr. Goffman, you know better. You know better, Mr. Goffman.

Q. Weren't they, Mr. Wren?

A. You know better, because you received one on EAST OF EDEN.

Q. Weren't they, Mr. Wren?

A. You received one on EAST OF EDEN, the first picture I

(2355)

negotiated for, Mr. Goffman.

Q. Mr. Wren, we will talk about EAST OF EDEN later. Just answer my questions, please.

A. I answered your question. I said: You know better.

Q. Well, I don't consider that an answer and I am sure nobody else does.

By The Court:

Q. Yes or no?

A. No.

By Mr. Goffman:

Q. You did not prepare these wires in consultation with counsel?

A. No, sir.

Q. Not even the forms of wire?

A. No, sir.

• • •

Q. Now, you remember the Warner picture, STRANGE LADY IN TOWN?

A. Greer Garson, I believe.

Q. What?

A. Greer Garson.

(2356)

Q. That is right, Greer Garson, Lana Andrews. It was not a bad cast, was it?

A. No.

Q. Now, that is a picture you did not mention in your direct testimony when Mr. Sawyer examined you, did you?

Mr. Sawyer: I think that is an error.

Mr. Goffman: I don't think it is an error. Let us see what his recollection is.

A. I don't recall.

By Mr. Goffman:

Q. You don't recall?

A. No, sir.

Q. Isn't it a fact that this is one that did not even get into the interrogatories that you signed in this case as a

picture about which you had any complaint. Isn't that a fact?

A. I don't recall. I remember the picture, Greer Garson and Dana Andrews.

Q. I won't take the time now, but if you will check during the luncheon recess, let us know whether STRANGE LADY appears in the answers to interrogatories that you signed, at any place, making a complaint about it.

A. I will check with counsel.

Q. Will you do that?

A. Yes, sir.

• • •

(2357)

Q. Do you remember the first time it was mentioned in this case?

A. No, sir.

Q. It was during Mr. Nizer's cross-examination. You volunteered something about this picture.

A. I may have.

Q. And you volunteered something which would indicate some kind of complaint.

A. It was merely my interpretation.

Q. Do you remember the offer you made on this picture?

A. I think there was—

Q. I am just asking if you remember.

A. I think there was a cash guarantee.

Q. A small cash guarantee, wasn't it?

A. I don't recall. I think there was a cash guarantee.

Q. You don't remember what the figure was?

(2358)

A. No, sir.

Q. You don't. I see. Well, did you remember it last week when Mr. Nizer was cross-examining you?

A. I may have, sir.

Q. And you mean you have forgotten it since then?

A. Since then we have been through quite a few pictures.

Q. I am just asking you, have you forgotten since last week?

A. I have forgotten. I told you that.

Q. Your testimony now is you don't remember the cash guarantee that you made on STRANGE LADY IN TOWN?

A. I have said that, sir.

Q. All right. Now, apart from your cash guarantee do you remember the offer that you made on this picture?

A. No, sir; I do not.

Mr. Goffman: I would like to have this marked for identification.

(Offer dated March 31, 1955, marked for identification as Defendants' Exhibit No. 63 (Warner Bros.))

By Mr. Goffman:

Q. I show you D-63 which is your offer, I assume, your offer dated March 31, 1955, for this picture. You see that?

A. Yes, I am looking at it now, Mr. Goffman.

Q. Will you read it to yourself.

(2358a)

A. Yes, sir.

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(2359)

Q. Now, you remember, Mr. Wren, before the recess we were talking about the Warner Brothers picture STRANGE LADY IN TOWN.

A. Yes, sir.

Q. And you remember my asking you or saying to you that I did not recall your having testified to that at all on

your direct examination when Mr. Sawyer questioned you. I think Mr. Sawyer has since agreed that I was accurate in that recollection.

Mr. Sawyer: Quite right.

By Mr. Goffman:

Q. Now, I also asked you whether you remember having mentioned the picture during Mr. Nizer's cross-examination;

(2360)

do you recall that?

A. I believe you did, yes, sir.

Q. And I asked you whether you remembered having stated the amount of the cash guarantee you had put on that picture when you testified last week, and you said you did not recall it; correct?

A. Yes, sir.

Q. And then I showed you D-63 which was your offer on this picture.

A. Right, sir.

Q. And your offer on this picture contains in it—I am not asking you to read it but just to look at it—the amount of that guarantee.

A. Right, sir.

Q. Now, I am going to show you and ask you to read page 1662 of the transcript and show you whether in that transcript you have not also stated what the guarantee was.

A. Right, sir.

Q. And you stated it correctly, didn't you?

A. Yes, sir.

Q. So that D-63 which was dated March 31, 1955—isn't that right?

A. I think so, yes, sir.

(2361)

Q. —You testified last week on May 31, 1961, over six years later, and remembered that figure exactly; is that right?

A. Yes, sir.

Q. But today, one week later, you couldn't remember what you testified to last week; is that correct?

A. I would have difficulty after this week of remembering what happened Monday or Tuesday, I believe, sir.

Q. I see. Well, now, let me ask you some other questions about the picture STRANGE LADY IN TOWN. You recall that that had Greer Garson in it and Dana Andrews?

A. I believe I said that earlier, yes, sir.

Q. We talked about that as being a fairly decent picture.

A. Right, sir.

Q. And aside from the guarantee do you remember the terms of the offer?

A. I believe I do. I just looked at it a minute ago.

Q. You just looked at it?

A. Yes.

Q. All right. And in this case you made an offer of—aside from the cash guarantee, now—

A. Yes.

Q. —of 80 per cent with an expense figure of $5250; isn't that right?

(2362)

A. I think so, sir.

Q. Right. And that $5250 was substantially higher than the $4970.19 figure you have been using in other offers for pictures?

A. But these are arbitrary figures.

Q. But it is high?

A. Yes. You mean higher than a subsequent offer? Yes, sir.

Q. So that the expense figures that you used in this offer were higher than you used in other offers?

A. Sure, they fluctuate in all pictures.

Q. And the 80 per cent was lower than the 90 per cent you offered in other offers; is that correct?

A. Yes, sir.

Q. So that you weren't in so far as those terms were concerned offering Warner Brothers as good terms as you had been offering other people; isn't that correct?

A. At this particular time? May I see that again, sir?

Q. Surely.

A. Now you see this has nothing to do with house expense. It says 80 per cent of the gross receipts over $5250. It doesn't mention house expense or anything else.

Q. It is the equivalent of that?

A. It just says over $5250.

Q. But that $5250 is the figure you would deduct first?

A. It is a bidding figure, yes.

(2363)

Q. But is the figure you would deduct first?

A. Oh, yes, plus—

Q. Just like the house expense is a figure you would deduct first?

A. Yes, sir.

Q. But this is a higher figure, $5250, than the other figures you have talked about of $4970.19?

A. Naturally, sir.

Q. Therefore, I am right when I say that those terms that we have just been discussing were not as good as the terms you had been offering other distributors?

A. On subsequent deals?

Q. And on deals at the same time.

A. Yes, sir; yes, that's right.

Q. Now, when you made this offer for STRANGE LADY IN TOWN, when did you expect to play the picture?

A. I think I said approximately on availability, sir.

Q. That is right. And can we agree that availability on this picture was April 30, 1955?

A. I don't know, sir.

Q. Do you want to refer to any records to check that?

A. I don't know if we have any.

Q. Well, when you made this offer on March 31, 1955—

A. May I see it?

(2364)

Q. Just a moment, just a moment.

A. All right, sure.

Q. When you made this offer on March 31, 1955, and said that it was approximately on availability, you knew then what the availability was?

A. I would assume. I would like to see the solicitation letter.

Q. All right. You would like to see your solicitation letter?

A. Right, sir.

Mr. Goffman: May we have it?

(Mr. Sawyer hands paper to Mr. Goffman.)

By Mr. Goffman:

Q. Is this the letter you would like to see?

A. There must be one subsequently. It says, "Kindly be guided accordingly." There must have been something since then, Mr. Goffman.

(2365)

Q. Well, this is what Mr. Sawyer handed me.
Is there anything else, Mr. Sawyer?

Mr. Sawyer: I don't have it.

By Mr. Goffman:

Q. These are from your files Mr. Sawyer is looking at, aren't they?

A. Yes, this is a screening notice.

Q. All right, then. He doesn't have what you are after; is that right?

A. I want a solicitation letter specifying what the availability is.

Q. Don't you get them sometimes otherwise than in solicitation letters?

A. No, sir.

Q. You get them over the phone, don't you?

A. Invariably with the solicitation letter, sir, with the exception—

Q. You don't mean "invariably."

A. With the exception of Metro.

Q. You don't mean "invariably," do you? Didn't we have an incident this morning where we had a long discussion about fixing the availability date of HELEN OF TROY?

A. I didn't say I got that over the phone, sir.

(2366)

Q. It wasn't in the solicitation letter, was it?

A. No, sir.

Q. All right. And we did finally agree that you got it as February 11, 1956?

A. I agreed that that was the date on the letter that was in another handwriting than mine, other than mine.

Q. In your file?

A. Yes, sir.

Q. And won't you agree with me here that this picture STRANGE LADY IN TOWN was available for April 30, 1955?

A. Well, I would like to see the solicitation letter, sir.

Q. All right.

A. There is some indication of it.

Q. If Mr. Sawyer will hand you any papers that you want from your files, I will be happy to have you read them.

Mr. Sawyer: Don't look at me. It is your cross-examination. If you have such a letter, you show it to him.

Mr. Goffman: He is asking you for a solicitation letter in your file.

A. I am asking anyone who has it, sir. If there is a solicitation letter, it contains the availability of STRANGE LADY IN TOWN.

(2367)

By Mr. Goffman:

Q. Well, will you look at your files and see if you have such a letter?

A. This gentleman has my file.

Mr. Sawyer: We do not have such a letter.

Mr. Goffman: All right.

Mr. Sawyer: Do you have such a letter?

Mr. Goffman: If I had such a letter, I would show it to him.

Mr. Sawyer: All right, then. Nobody has such a letter.

By Mr. Goffman:

Q. Now, isn't it a fact, therefore, Mr. Wren, that you learned the availability of this picture in some form other than in the solicitation letter?

A. I may have.

Q. And isn't it a fact that that availability was April 30, 1955?

A. I don't remember, sir.

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(2369)

Q. Let me ask you this: When did you expect to play STRANGE LADY IN TOWN when you made a bid for that picture or made an offer for it?

A. I don't recall, sir. It says "Approximately on availability" there.

Q. Well, will you look at your play-off and tell us from your play-off when you expected to play that picture?

A. Well, I would if I knew when it was available, sir.

Q. No, I am asking you for your recollection. You have testified about this picture, haven't you?

A. What did I say on my testimony other than—

Q. I say, you have testified about this picture, haven't you?

A. Yes, sir, but nothing about availability, sir.

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(2370)

Q. And you have testified about other pictures?

A. I have testified about STRANGE LADY IN TOWN with reference to the guarantee.

Q. Just a minute.

A. I have testified about hundreds of pictures.

Q. Mr. Wren, will you wait for a question?

You have testified about other pictures and have stated from your recollection when it was that you planned to play those pictures, didn't you?

A. I believe I have.

Q. Right. And you have also testified as to certain pictures that you said you played because you weren't able to play other pictures; isn't that right?

A. I believe so, yes, sir.

Q. And you have done all that from memory?

A. Not all of it from memory. I have been handed any number of sheets here with availability dates on them from competitive bid applications, from requests for offers.

Many times my memory was refreshed from the original application

(2371)

or from solicitation letters. I referred to them occasionally here, sir, many times.

Q. Would you like me to refresh your memory on this?

A. I beg your pardon?

Q. Would you like me to refresh your memory on this?

A. Yes, sir, I would.

(2372)

Q. All right. Isn't it a fact that you intended to play STRANGE LADY IN TOWN immediately following HIT THE DECK?

A. I don't know, sir.

Q. You don't know?

A. No, sir.

Q. You have no recollection about that at all, do you?

A. No, sir, I do not.

Q. All right. Do you recall testifying in a deposition in this case?

A. Yes, sir.

Mr. Goffman: At 625.

By Mr. Goffman:

Q. Do you recall being asked these questions and making these answers?

A. When was this, may I ask?

Q. What is it?

A. What date was this, may I ask?

Q. When you made these depositions?

A. Yes.

Q. November 20, 1957.

A. Thank you.

Q. Isn't that the same date as most of the depositions you have been questioned about here?

A. Yes, but I mean they referred to other things that

(2373)

happened in this particular area of the case.

Q. You were asked these questions and made these answers:

"Q. Then what made you put front money in on STRANGE LADY but no front money on CADILLAC?" Now, just interrupting, "front money" is a cash guarantee, isn't it?

A. Yes, sir.

Q. Right. So I will repeat:

"Q. Then what made you put front money in on STRANGE LADY but no front money on CADILLAC?

"A. Because I needed a picture.

"Q. Well, you needed it for a fill-in?

"A. That is right.

"Q. Was that after PRODIGAL?

"A. Oh, no, that was around the same time as THE GLASS SLIPPER.

"Q. Well, did you need the fill-in for after?

"A. I didn't have THE GLASS SLIPPER."

Now, listen to this question:

"Q. Oh, you mean you needed the fill-in for after HIT THE DECK?

"A. That is right."

A. That's what I said.

Q. You made that answer?

A. Yes, sir.

(2374)

Q. Therefore, it is a fact that you wanted STRANGE LADY IN TOWN and made your offer for it to follow HIT THE DECK; is that right?

A. That's what it says there, yes, sir.

Q. Right. Now, isn't it a fact, Mr. Wren, that at the time you made your offer for STRANGE LADY you already had GLASS SLIPPER?

A. I don't know, sir.
Q. To follow HIT THE DECK.
A. I don't know.

Mr. Goffman: Will you mark these two.

(Letter dated March 3, 1955, from Jay Wren to Louis Formato was marked Defendants' Exhibit 64 (Warner Brothers) for identification.

(Letter dated March 21, 1955, to Jay Wren, signed "Sincerely" was marked Defendants' Exhibit 65 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. I show you D-64 and ask you if this is not your offer for GLASS SLIPPER.
A. Yes, sir.
Q. And what is the date of that offer?
A. March 3, 1955.

Mr. Goffman: All right. I offer it in

(2375)

By Mr. Goffman:

Q. Now, what was the date of your offer for STRANGE LADY IN TOWN? I am showing you D-63.
A. March 31, 1955.
Q. So that when you made this offer on March 31, 1955, for STRANGE LADY IN TOWN, you had already made an offer for GLASS SLIPPER as early as March 3, 1955?
A. To play when, Mr. Goffman?
Q. Well, when was it to play?
A. I don't know, there is nothing in there to indicate, sir.
Q. I see. But you did in fact play it after HIT THE DECK?
A. I did, yes, sir.

Q. Now, when was your offer for GLASS SLIPPER accepted?

A. I don't know, sir.

Q. I show you D-65.

A. March 21, 1955.

Q. So that on March 21, 1955, you had an acceptance of your offer for GLASS SLIPPER?

A. Yes, sir.

Q. And that was ten days before you made your offer to Warner Brothers for STRANGE LADY IN TOWN?

A. Right, sir.

Q. So that at the time you made your offer for STRANGE LADY

(2376)

IN TOWN you already had GLASS SLIPPER?

A. With no availability date, sir.

Q. But you had planned to get STRANGE LADY IN TOWN only if you couldn't get GLASS SLIPPER?

A. Is that what I said there, sir?

Q. Isn't that what you said?

A. Well, that's what I said, yes, sir.

Q. Right. So that in fact you had no possibility of playing STRANGE LADY IN TOWN after HIT THE DECK because you in fact had gotten GLASS SLIPPER for that purpose; isn't that right?

A. I don't know that I—may I see the contract for GLASS SLIPPER? If that's what I testified—

Now, there should be a contract.

Q. Isn't that a fact from your records?

A. That's what I said there, sir. Now, if I could see the contract on GLASS SLIPPER I may be able to help you on this thing.

Q. Well, you are helping me fine, Mr. Wren. Just answer my question.

Mr. Sawyer: Let the witness see the contract, Mr. Goffman.

The Witness: May I see the contract on GLASS SLIPPER?

(2377)

By Mr. Goffman:

Q. I don't see any necessity for it, Mr. Wren. If it will help you to answer any of my questions, I will show it to you.

A. There will—

Q. Let me put a question to you that you think it might help you on. All right?

A. Right.

Q. Now, in fact, you played GLASS SLIPPER during the period following HIT THE DECK.

A. I don't deny that, sir. It is right here that I did play it.

Q. And you couldn't have played STRANGE LADY IN TOWN during that same period, could you?

A. No, sir, not at the same time I played HIT THE DECK, sir.

Q. Now, you have testified—

Mr. Sawyer: Don't interrupt him.

The Witness: Not at the same time I played GLASS SLIPPER; I couldn't have played STRANGE LADY IN TOWN with GLASS SLIPPER, not at the same time, no, sir.

By Mr. Goffman:

Q. Right. And you have testified that you made an offer to get STRANGE LADY IN TOWN because you needed it to fill in for after HIT THE DECK?

(2377a)

A. I may have said that, then, yes, sir.

Q. But in fact you already had GLASS SLIPPER at that time to follow HIT THE DECK?

A. I may have, yes, sir.

(2378)

Q. It is a fact that you did, isn't it?

A. Yes, sir. May I see the contract on GLASS SLIPPER, please? That's no commitment, sir.

Q. Well, will you wait until I ask you a question?

A. Yes, sir.

Q. Before you answer any?

A. Yes, sir.

Q. Now, as a matter of fact, you had a far better engagement with GLASS SLIPPER than you could have had with STRANGE LADY IN TOWN, didn't you?

A. Now, how would I know that, sir?

Q. Don't you recall that?

A. If I say that—

Q. Don't you recall that?

A. —that I had a good engagement of GLASS SLIPPER, I certainly did.

Q. Than you could have had with STRANGE LADY?

A. I don't know that, sir.

Q. You don't know?

A. I didn't get STRANGE LADY.

Q. Didn't you so testify?

A. I may have.

Q. All right. Now, let me ask you that: Continuing with

(2379)

the same testimony that I read to you a moment ago:

"Q. So that instead of STRANGE LADY, you were able to get GLASS SLIPPER; is that correct?

"A. That is right. That is the way it worked out.

"Q. Which was a far better engagement that you could have obtained with STRANGE LADY IN TOWN; isn't that true?

"A. Well, now, we know that.

"Q. You do know that?

"A. Yes."

A. Now we know that.

Q. Did you make those answers?

A. Yes, sir, after the pictures have played.

Q. So that you lost nothing by not getting STRANGE LADY IN TOWN?

A. I lost STRANGE LADY IN TOWN, sir.

Q. And you played GLASS SLIPPER in place of it?

A. Yes, sir.

Q. Right. And that was a far better engagement according to your testimony?

A. Grosswise, yes, sir, but had they accepted my deal, maybe not.

Q. You did state in your testimony—

(2380)

A. I did, sir.

Q. —that it was a far better engagement.

A. I did, sir. I won't deny it, yes, sir.

Q. Do you remember the Warner picture BLOOD ALLEY?

A. John Wayne?

Q. Yes, John Wayne.

A. Yes, sir.

Q. Lauren Bacall.

A. Right.

Q. Do you remember your offer for that picture? It has already been testified to here. Would you like to see it?

A. Yes, sir, I would like to see it, if possible.

Right, sir.

Q. Now, that was an offer which contained no cash guarantee; is that right?

A. Yes, sir.

Q. And it was the so-called 90-10 deal over house expenses with the distributor to pay all advertising, wasn't it?

A. I believe, sir.

Q. And it was for three weeks?

A. Yes, sir.

Q. And this is the kind of deal which you have already testified to when Mr. Nizer examined you was a bad deal for the distributor?

(2381)

A. Depending on the length of run, yes, sir.

Q. And this was three weeks?

A. Yes, sir.

Q. So this was one of those bad deals for the distributor?

A. Not necessarily. It could have run six weeks.

Q. But, Mr. Wren, when you made the offer as you have testified heretofore, this kind of deal was a bad deal for the distributor; isn't that right?

A. All depending on how the picture fared, sir.

Q. Haven't you so testified?

A. Yes, I have, but when you analyze—

Q. That this kind of deal is a bad deal for the distributor?

A. I have also said that if it ran a long time—

Q. First, answer whether you said that.

A. I said yes, but I think I have also qualified it that if the picture ran a long time, it was a good deal for the distributor. I think we were agreed on that.

Q. But at the time you played it, when nobody knew that it was going to be a long run or a short run, this deal as you made it was a bad deal for the distributor?

A. That has to be determined by the distributor. He is the final judge on this thing. He analyzes it. He evaluates it and he determines whether it is good, bad or indifferent.

Q. Fine. Now, in this case, you also had a house expense

(2382)

figure, didn't you?

A. I believe I did, yes, sir.

Q. And in this case, the figure was $5,070.19.

A. Plus some other items, right, sir?

Q. Yes, other deductions that you were going to make.

A. Yes, sir; yes, sir.

Q. And this figure was still higher than the figure you were asking of other distributors as far as house expense was concerned?

A. But lower than I was asking you on STRANGE LADY IN TOWN.

Q. But it was still higher than what you were asking others?

A. Yes, sir.

Q. So that to that extent it was not as good a deal as you were offering to other distributors; isn't that right?

A. When was this, September, sir?

Q. September 7, 1955; isn't that right?

A. Just a moment, sir.

Yes, sir.

Q. Do you remember the Warner picture BURNING HILLS?

A. I believe it played the Stanton, sir.

Q. Do you remember testifying about that here?

A. I might have, sir.

Q. Yes.

A. Probably did.

(2383)

Q. And do you remember attending the screening for that picture?

A. I probably did.

Q. And do you remember being advised in the solicitation letter that it was available on August 15, 1956?

A. I may have. May I see the letter, please?

Q. Do you remember that?

A. Where is the availability date, Mr. Goffman?

Q. (Indicating).

A. Oh, yes, I see. You are right; you are right, August 15, '56.

Q. And did you make an offer for that picture?

A. I believe we did.

Q. You believe you did?

A. Yes.

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(2384)

Q. I assume that since Mr. Sawyer can't produce a copy of the offer that your recollection is wrong that you made an offer on this picture?

A. I honestly don't know, sir.

Q. All right. Now, didn't you in fact refuse to submit an offer on this picture?

A. I could have, sir.

Mr. Sawyer: Wait a minute. I am sorry, Mr. Goffman.

Mr. Goffman: Would you mark this, please?

(Telegram dated July 26, 1956 from Jay Wren to Warner Brothers was marked Defendants' Exhibit 66 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. I show you D-66 and ask you if this is a wire you sent Warner Brothers in connection with this picture?

A. Yes, sir.

Mr. Goffman: All right. I offer it in evidence and would like to read it, Your Honor.

It is dated July 26, 1956, addressed to Warner Brothers:

"Re your solicitation letter of July 19, 1956, the Viking Theatre does not wish to submit an offer for a license to exhibit first-run Philadelphia the motion

(2385)

picture BURNING HILLS but will negotiate for the first-run showing of this attraction.

Kindest regards, Jay Wren."

By Mr. Goffman:

Q Do you remember sending that?

A. Now that I have seen it, yes, sir.

Q. You do?

Did you ever call on Warner Brothers after sending them this wire for the purpose of negotiating for this picture first-run?

A. I don't know whether I did or not, sir.

Q. You don't recall doing so?

A. I don't recall Warner Brothers calling me, sir.

Q. But you don't recall calling on that?

A. No, sir, I don't recall either way.

Q. As a matter of fact, isn't it true that you did not call on Warner Brothers after sending this wire for the purpose of negotiating with them?

A. Mr. Goffman, I told you I do not know. I don't know whether I called them or they called me. I don't have any recollection with regard to that after that.

(2386)

Q. Have you any recollection of your ever having called them for the purpose of negotiating on this picture?

A. No, I do not have any recollection on that, sir.

Q. All right. Now, did you think that they were under any obligation to call on you for the purpose of negotiating for this picture?

A. I don't think I indicated that I thought the responsibility was on Warner Brothers or the Viking.

Q. Right. So that when you turned down their invitation to submit an offer and said that you will negotiate, and neither you nor they negotiated, you have no complaint about this picture; isn't that right?

A. Did they contact me, sir?

Q. I am asking you whether they did or not.

A. I don't know; I don't recall, sir.

Q. Will you listen to my question: I am asking you now whether you sent them this wire and said, "Viking Theatre does not wish to submit an offer but will negotiate," and neither you nor Warner negotiated. You have no grievance in so far as this picture is concerned?

A. Yes, I would like to know how the picture was sold. If it was sold by negotiation I have a grievance. If it was sold by bid, I have no grievance.

Q. And if it was sold by bid, then you have no grievance

(2387)

at all as far as this picture is concerned?

A. No, if someone submitted a bid and I wanted to negotiate, I assume they accepted the bid. I wouldn't know what they were doing just because I sent this wire.

Q. But didn't you expect to call on Warner Brothers when you sent them a wire and said, "I don't want to submit an offer but will negotiate?"

A. Of course not.

Q. Isn't that a promise that you will negotiate with them?

A. No, sir.

Q. It isn't?

A. It is if they haven't any other offers.

Q. I see. It is no promise on your part to come to them and say that you will negotiate?

A. Of course not.

Q. And it is no indication that you plan to come to them and negotiate?

A. It is an indication that I will negotiate.

Q. If they call on you?

A. Yes, sir.

Q. Right. Now, do you remember testifying on Friday, I think, when Mr. Nizer was examining you about a picture called THE DESPERATE HOURS?

A. Yes, sir.

(2388)

Q. Do you remember that? And do you remember the letter that Mr. Ulrik Smith sent you?

A. Is that the one "We will contact"—"We will negotiate with you further?"

Q. That is right.

A. Yes, sir, I remember that.

Q. And when you read that letter you said that you thought since Mr. Smith said to you "Will negotiate further," you thought he ought to call on you?

A. Right, sir.

Q. But when you write to Warners' and say "Will negotiate with you," you don't think you ought to call on them?

A. No, sir, until I know their plans.

Q. Right. That is fine.

Do you remember the Warner Brothers picture THE McCONNELL STORY?

A. Yes, sir.

Q. Did you see the picture?

A. I believe I did.

Q. Did you make an offer on it?

A. I believe we did.

Q. This was another one where you had a $5250 weekly house expense this time; isn't that right?

A. I don't know. I haven't seen it, sir.

(2389)

Q. Higher than the figures you have been naming for other distributors?

A. Yes, sir. It is $5250 weekly house expense, the same as STRANGE LADY IN TOWN, sir, that's right.

Q. So that when you were making offers for Warner Brothers the house expense that you were deducting first from them was $5250 instead of $4970.19 you were suggesting to other distributors?

A. If they accepted the deal.

Q. Yes, sir.

A. That's right, the option.

Q. That was your offer?

A. That was my offer.

Q. Now, at the time you made that offer you offered to play it approximately on availability; do you remember that?

A. No, sir. I would if I saw this. I probably did say "approximately on availability."

Q. I will show it to you in a minute.

I show you P-35.

A. Right, sir, which would advise on or about August 25.

Q. Right. So that you knew there from your own offer that the availability was around August 25, 1955?

A. Yes, sir.

Q. And you were offering to play it on or about availability?

(2390)

A. Right, sir.

Q. Now, when did you make that offer?

A. July 15, '55.

Q. Now, on July 15, 1955, weren't you in fact already playing NOT AS A STRANGER?

A. Yes, sir.

Q. All right. So that when you made the offer for McCONNELL STORY for on or about availability, August 25, 1955, you were only in your third week of NOT AS A STRANGER; isn't that right?

A. Right, sir.

Q. All right. And you had a commitment to play that picture for ten weeks?

A. Right, sir.

Q. And ten weeks would have taken you to September 8, 1955, wouldn't it?

A. Right, sir.

Q. So that you couldn't have played McCONNELL STORY on or about availability on August 25, 1955, could you?

A. On or about, approximately on availability I could have played it. That's what I said here "approximately on availability."

Q. Could you under your commitment for NOT AS A STRANGER have played it before September 8, 1955?

(2391)

A. I could have played it sooner than the theatre that did play it under his commitment.

Q. Now, Mr. Wren, will you answer my question, please.

A. Yes, sir.

Q. Could you under your commitment for NOT AS A STRANGER have played it before September 8, 1955?

A. No, sir.

Q. You couldn't?

A. No, sir.

Q. And, in fact, you played NOT AS A STRANGER until September 21, 1955?

A. For the lack of film, yes, sir

Q. Mr. Wren, please answer my question.

A. I answered you why, sir, we played it twelve weeks because we had nothing to follow, sir.

Q. Will you answer my question: You did play NOT AS A STRANGER until September 21, 1955?

A. I did, sir.

Q. And when you made your bid, your offer to Warner Brothers, for McCONNELL STORY, you had to play NOT AS A STRANGER at least until September 8, 1955?

A. Yes, sir.

Q. So isn't it a fact, therefore, that you would not have been able to play McCONNELL STORY on availability on

(2392)

August 25, 1955?

A. And that's when Warner pictures are to be played on availability?

Q. I have asked you whether you could play it.

A. I have answered that, sir.

Q. Mr. Wren, I have asked you whether you can play it on the date you said you would play it.

Mr. Sawyer: How many times do you want him to answer?

The Witness: I have answered that. If you will read this, I have answered that, and we have agreed I couldn't open it before September 8.

By Mr. Goffman:

Q. And, therefore, your bid was not a genuine one when you said you would open it around availability, September 25?

A. It certainly was. I said "approximately on availability." That's about as close to September 8 as you can get unless you go to September 23. That may be a little more—a little closer.

Q. I see. So it was your intention when you made that offer to open it approximately on availability, August 25, in fact, not to open it before September 8 and maybe open it even later; isn't that right? Was that your intention?

A. It was to follow NOT AS A STRANGER, yes, sir.

(2393)

By Mr. Goffman:

Q. You didn't say so in your offer, did you?

A. Of course, I didn't. I said, "Approximately on availability."

Q. But it was your intention, therefore, not to play it until at least after September 8, 1955?

A. Right, sir; right, sir.

Q. Now, isn't it a fact that between August 25, 1955, and September 8, 1955, was a rather important holiday called Labor Day?

A. Yes, sir.

Q. Right. And is it likely to expect that a distributor would postpone a picture to open after a holiday like Labor Day when its availability was before Labor Day?

A. Didn't you accept a deal from a man who couldn't open it on Labor Day, sir?

Q. Mr. Wren, will you answer my question? Did you expect Warner Bros. when you made this offer for McCONNELL STORY to waive the Labor Day holiday?

A. I didn't ask them to do anything of the kind, sir.

Q. You therefore expected to play it before Labor Day?

A. I did not. I said, "Approximately on availibility." I didn't ask Warner Bros. to forget Labor Day, to think of it, anything else.

(2394)

Q. Well, then, let me just make this resume of your testimony, if it is accurate, and then we can weigh it.

A. All right, sir.

Q. When you bid for McCONNELL STORY which was available on August 25th and said that it would be played approximately on availability, you did not intend to open it before Labor Day, you did not intend to open it on Labor Day, but you intended to open it some time after Labor Day which was after September 8th, as you say, when you had your first commitment.

A. I don't know what day Labor Day was. Was Labor Day before September 8th?

Q. Yes.

A. I see.

Q. Labor Day that year was September 5th and the Labor Day week end began on Friday, September 2nd, in 1955.

A. September 2nd?

Q. Yes.

A. And you accepted a deal from Randolph Theatre for eight weeks?

Q. Mr. Wren, will you please answer my questions?

A. Yes, sir.

Q. You will have plenty of opportunity when Mr. Sawyer brings on his redirect.

A. Good.

(2395)

Q. To make whatever explanations are then appropriate.

A. Yes.

* * *

Q. When you made your offer on McCONNELL STORY stating that you would have it available—that you would lay it on or about availability—

A. I didn't say "on or about availability"; I said "Approximately."

Q. Approximately?

A. "Approximately on availability," which we have been advised is on or about August 25th.

* * *

(2396)

Q. Now, isn't it a fact, Mr. Wren, that McCONNELL STORY did open at the Randolph Theatre on August 31, 1955?

A. Yes, sir.

Q. Before Labor Day?

A. Yes, sir.

Q. O. K. Now, do you remember the Warner picture PETE KELLY'S BLUES?

A. Yes, sir.

Q. Do you remember who starred in that picture?

A. William Holden, I believe. No, Webb.

Q. Jack Webb?

A. That's right, sir.

(2397)

Q. You went to a screening?

A. Certainly.

Q. You made an offer for that picture?

A. I believe we did.

Q. It was available on August 27th?

A. I don't know, sir. I would have to look at it.

Q. Well, I will show you this schedule again and ask you if it refreshes your recollection.

A. PETE KELLY'S BLUES, we are talking about, now.

Q. Does that refresh your recollection?

A. No, sir. I don't get those schedules, I mean.

(2398)

A. No, sir, I don't get those schedules. I have told you that.

Q. I am asking you whether it refreshes your recollection as to whether this picture wasn't available August 27, 1955.

A. May I see my offer, or may I see a request for offer that might contain the availability date, other than the release schedule that I do not receive?

Q. Sure: Is that what you wanted to see (handing)?

A. Yes, sir.

No, there is no availability date there, Mr. Goffman, you will notice that.

Q. (Mr. Goffman hands another paper to the witness.)

A. Yes, sir.

Q. All right, you have seen now your invitation and you have seen your offer.

A. Right, sir.

Q. And you have no recollection that this was available August 27, 1955?

A. No, sir. It is not in your solicitation letter.

Q. But you do know that it, in fact, played in Philadelphia beginning August 31, 1955?

• • •

(2401)

The Witness: I do not.

By Mr. Goffman:

Q. Well, can you check your records, which you have done heretofore, as to the playing time at the other theatres, and see whether that isn't the fact.

A. I will accept your word for it.

Q. All right. Well, then you will accept that it did play at another theatre on August 31, 1955?

A. If you tell me that, yes, sir.

Q. And that was also over a Labor Day weekend of that year?

A. Yes, sir.

Q. And therefore, when you made your offer to Warner Brothers on PETE KELLY'S BLUES, you could not have played it for that Labor Day weekend, isn't that right?

A. Yes, with an explanation.

Here, where I knew definitely what the availability was, I indicated: Which you advised was on or about August 25. I evidently did not know the availability of PETE KELLY'S BLUES or I would have incorporated a similar sentence in there.

Q. But you were willing to take the risk as to what that availability would be?

A. I had to take the risk. It is not in your solicitation letter. It is nothing. It could have been Christmas.

(2402)

Q. In fact, Mr. Wren, didn't you testify this morning that you never make an offer without in fact knowing what the availability is that is told you?

A. Yes, sir, that is what I said.

Q. And that happens here too, didn't it?

A. I didn't say it happened with PETE KELLY'S BLUES, sir. I don't know whether it did happen with PETE KELLY'S BLUES.

Q. If it didn't happen you wouldn't have made an offer, would you, if you didn't know what the availability was?

A. In all probability.

Q. You would not?

A. I probably would have not.

Q. All right. Do you remember the Warner picture SERENADE?

A. Yes, sir.

Q. You have testified to that picture?

A. Yes, sir.

Q. Now, this was another one of those 90/10, three-week deals, over house expenses, with the distributor paying all the advertising, wasn't it?

A. I would like to see the deal, please.

Q. All right, we will show it to you.

This is P-43, which you offered in evidence.

A. Yes, sir.

(2403)

Q. I am right in that, am I not? I am right in what I said about the offer, am I not?

A. It is a house expense deal. $4,970.19.

Q. 90/10, three weeks—

A. Right, sir.

Q. —distributor to pay all expense?

A. Right, sir.

Q. Now, you said in your direct testimony that you were told this picture was available for April 21, 1956. Do you remember that?

A. Yes, sir.

Q. That is vivid in your mind, isn't it, that you so testified?

A. Well, I just saw it on your schedule, too, sir.

Q. And you so testified?

A. Yes, sir.

Q. And when you say "my schedule" you are referring to this schedule here?

A. The release schedule. You have it indicated in red.

Q. And you are relying on that for SERENADE, you are accepting the fact that SERENADE is properly alleged here?

A. No, I think it indicates what we say, sir.

Q. It indicates what you say, and you are relying on the

(2404)

release dates on this schedule for SERENADE?

A. I relied on one of yours over on the far side here, sir.

Q. But you are not willing to accept it for PETE KELLY'S BLUES, is that it?

A. I will accept it for PETE KELLY'S BLUES.

Q. I see, and on PETE KELLY'S BLUES it is August 27, 1955?

A. Right, sir.

Q. Now, coming back to SERENADE, you said you would have made a better offer if you knew it might be available for Easter. Do you recall saying that?

A. Not might be. If it was available for Easter.

Q. All right, if it was available for Easter, you would have made a better offer?

A. Yes, sir.

Q. And you also said that was because you needed an Easter picture?

A. Yes, sir.

Q. Do you remember so testifying?

A. Yes, sir.

Q. Now, were you invited to a screening of the Warner picture MIRACLE IN THE RAIN?

A. I am not certain, sir.

Q. Did you see the picture at a screening?

A. I don't recall.

(2405)

Q. You don't recall?

A. No, sir.

Q. Well—

A. If it was screened I saw it.

Q. If it was screened you saw it?

A. Certainly. If I was invited to the screening I went to it.

Q. Suppose, to save some time, I show you all copies of the invitation to the screening with the notation that you attended.

A. All right. I attended. Didn't I attend?

Q. All right. Did you make an offer on that picture?

A. No, sir.

Q. You did not?

A. No, sir.

Mr. Goffman: Will you mark this?

(A telegram from Jay Wren to Charles Beilan, dated February 17, 1955, was marked Defendants' Exexhibit 67 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. Who was in this picture?

A. Wasn't Ann Johnson in that one?

Q. Yes. Jane Wyman?

A. I am not sure of her. I remember Ann Johnson.

(2406)

Q. Both pretty important stars.

A. Well, Jane Wyman I know was.

Q. She was the girl who made JOHNNY BELINDA some years ago, MAGNIFICENT OBSESSION—

A. Right.

Q. —and others?

A. Right.

• • •

(2407)

Mr. Goffman: I offer D-67 in evidence, Your Honor, and I would like to read it.

It is addressed to Warner Brothers, and it is dated February 17, 1955:

Re your solicitation letters of February 9th and February 10th, 1956, the Viking Theatre does not wish to submit an offer for a license to exhibit first-run Philadelphia the motion pictures, THE RIVER CHANGES, which you advise is available March 24th and MIRACLE IN THE RAIN, which you advise is available April 7th. Please continue to afford the Viking Theatre the opportunity to submit offers on all of your future releases. Kindest regards. Jay Wren.

• • •

(2408)

Q. Now, MIRACLE IN THE RAIN was in fact the Warner Brothers Easter release for that year, wasn't it?

A. You didn't say that in that wire.

Q. I am asking you whether it wasn't a fact.

A. It was not.

Q. It was not?

A. No, sir.

Q. And weren't you told it was?

A. I was told it was, but I wasn't given the availability of Easter. I was given the availability of April 7th, which was not Easter.

Q. Now, did you ask Warner Brothers whether they would move that up to Easter?

A. No, sir, the first time—

Q. You did not?

A. No, sir, we did not.

Q. You did not?

(2409)

A. No, sir.

Q. Now, don't you remember testifying in this case on this very subject?

A. I do, sir.

Q. At page 107, don't you remember testifying and Mr. Sawyer examined you:

We were advised that SERENADE was an April 21st release, and we expressed interest in the picture for Easter, as we needed an Easter picture, and were told that MIRACLE IN THE RAIN was the Warner Brothers' release.

Q. For what?

A. For Easter.

A. Right, sir, and when were we told, at the screening of SERENADE after the picture had been sold to the Mastbaum.

• • •

(2410)

Q. And we expressed interest in the picture for Easter, because we needed an Easter picture.

A. Right, sir.

Q. And were told that MIRACLE IN THE RAIN was the Warner Brothers release.

Q. (By Mr. Sawyer.) For what?

A. For Easter.

A. Right, sir, at the screening of SERENADE.

Q. Now, did you ever make an offer for MIRACLE IN THE RAIN for Easter?

A. Not on an April 7th availability, no, sir, because it was not Easter.

Q. Did you ever make an offer for MIRACLE IN THE RAIN?

A. No, sir, because it was not an Easter attraction.

Q. Mr. Wren, just answer my question.

A. I answered it, sir, no, sir.

Q. You did not, did you?

A. It was not an Easter attraction.

Q. All right, you did not make an offer for MIRACLE IN THE

(2411)

RAIN for Easter, for whatever reason?

A. No, sir.

• • •

Q. Didn't you say that you would make a better offer for SERENADE if you knew it were available on Easter?

A. Positively, for the same reasons you indicated about

(2412)

Labor Day, Easter is far better than Labor Day.

Q. And all I am asking you is, even though you testified that Warner Brothers people told you that MIRACLE IN THE RAIN was its Easter release you made no offer for that picture?

A. Yes, with the expectation that when we were advised that MIRACLE IN THE RAIN was an Easter release was at the screening of SERENADE after MIRACLE IN THE RAIN had been sold to the Mastbaum.

The wire indicates that we were told MIRACLE IN THE RAIN was April 7th, not Easter. This was after Easter again. We were told SERENADE was April 21st, again after Easter.

Q. What was the date that you say of the screening of SERENADE?

A. I didn't say, sir.

Q. Wasn't that way back on January 6, 1956?

A. I don't know, sir.

Q. Well, isn't this the paper you just saw when you say you attended that screening?

A. You remember, I didn't read them. I said, if that is it, that is all right with me.

Q. January 6, 1956?

A. This is MIRACLE IN THE RAIN, January 6, 1956.

Q. All right. Now, that wasn't after Easter, was it?

(2413)

Mr. Sawyer: Just a minute. I have March 2nd here.

Mr. Goffman: Here it is.

By Mr. Goffman:

Q. That was on MIRACLE IN THE RAIN?

A. Yes, sir, I said that was MIRACLE IN THE RAIN.

Q. And the screening of SERENADE was on what date?

A. I don't recall, sir.

March 2nd.

Q. And that wasn't after Easter, was it?

A. No, sir, but it was after MIRACLE IN THE RAIN.

Q. It was after the screening of MIRACLE IN THE RAIN. Is that what you are telling me?

A. Yes, sir.

Q. But it was before the picture had been awarded, before MIRACLE IN THE RAIN had been awarded to anybody, wasn't it?

A. What, the screening of SERENADE?
Q. Yes.
A. I don't know, sir.
Q. Well, didn't you—
A. We were told that it was sold to the Mastbaum at the screening that day, sir, of SERENADE. Mr. Sley and I were told that the picture was going into the Mastbaum, MIRACLE IN THE RAIN.

(2414)

Q. I see, but you made no offer for it, in any event?
A. I said we didn't, sir.
Q. Even though you needed an Easter picture?
A. It wasn't available Easter, sir.

• • •

(2415)

Q. May we now return to EAST OF EDEN, Mr. Wren?
A. Yes, sir.

Mr. Goffman: Will you mark this?

(Telegram from Jay Wren to William Mansell, dated February 14, 1955, was marked Defendants' Exhibit 68 (Warner Bros.) for identification.)

By Mr. Goffman:

Q. D-68 is the wire you sent declining to make an offer on that picture?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.

Mr. Goffman: Your Honor, I would like to read this one, because it bears particularly on both his direct and cross-examination. I think it will be merely a matter of refreshing it.

The Court: Very well.

Mr. Goffman: Warner Bros. Pictures, February 14th, 1955.

"Due to a prior commitment we are not in a position to make an offer on EAST OF EDEN however we wish to continue to be given the opportunity to submit offers on all of your future motion pictures.

(2416)

"Regards."

This one is in evidence, Your Honor, that is why I read it.

By Mr. Goffman:

Q. You testified in your direct examination that you were told that that picture was available for March 7,—

A. Yes, sir.

Q. —1955, isn't that right?

A. Yes, sir.

Q. And it was for that reason, that you had a prior commitment, and couldn't make an offer on the picture?

A. Yes, sir.

Q. What was that prior commitment?

A. TONIGHT'S THE NIGHT.

Q. TONIGHT'S THE NIGHT.

Now, in fact, you stopped playing TONIGHT'S THE NIGHT on March 10th or March 9th, 1955, and started playing a new picture on March 10th, 1955, didn't you?

A. Yes, sir.

Q. And therefore you could have played EAST OF EDEN on a March 7th availability, to open on March 10th, couldn't you?

A. Not at the time we discussed this, no, sir.

Q. Why not?

(2417)

A. Because we had a five-week commitment on the picture TONIGHT'S THE NIGHT, which I discussed with Mr. Mansell and Mr. Beilan.

* * *

Q. When did you decide to terminate the engagement of TONIGHT'S THE NIGHT before the five-week commitment had expired?

A. After the picture had opened.

Q. After it had opened? When did it open?

A. February 15th.

Q. February 15th. Now, how soon after it opened, do you recall?

A. No, sir, I do not.

(2418)

Q. Now, what picture did you get to follow TONIGHT'S THE NIGHT?

A. HIT THE DECK.

Q. And when did you get that picture?

A. Oh, shortly after I discussed EAST OF EDEN with Mr. Mansell and Mr. Beilan.

Q. And didn't you in fact decline to make a bid or offer on EAST OF EDEN because you had gotten HIT THE DECK to follow TONIGHT'S THE NIGHT?

A. No, sir.

Q. Didn't you so testify?

A. I don't believe so, no, sir.

Q. Well, let us see your deposition. Page 572. I start about the middle of the page. You were talking about TONIGHT'S THE NIGHT and the March 7th availability, and you then said:

• • •

(2419)

Q. All right, this is the question put to you in the deposition.

What did you discuss? What did you say to Mansell and Beilan and what did they say to you?

We had lunch at the Bellevue-Stratford and Mr. Mansell told me that EAST OF EDEN was available

(2420)

March 7th.

This is your answer:

And asked if I was interested in the picture which I had screened at the Locust I think at midnight or something like that.

I told him I was very much interested in the picture, but the availability was hamstringing me, because we had a commitment to play a picture called TONIGHT'S THE NIGHT for five weeks, and if it was possible to get out of it we might be able to play the picture. But I couldn't assure him the picture would open March 7th at the Viking Theatre, and if that availability stood I couldn't play the picture, and I that afternoon—well, I think it was that same afternoon or maybe a couple of days later, I sent him a wire to that effect, that due to a prior commitment I couldn't play the picture. I had consummated a deal for HIT THE DECK, which I knew I could play following TONIGHT'S THE NIGHT.

* * *

(2422)

Q. Now, what I am asking you is whether it isn't a fact, whether you didn't so testify, that when you sent the wire to Mr. Mansell saying that you had a prior commitment and couldn't make an offer on EAST OF EDEN, you already had made a deal for HIT THE DECK?

A. No, sir.

Q. That is not what you said here?

A. No, I think if you will read that, sir, I did not—

Q. Well, I will read it again.

(2423)

A. Please do.

Q. I sent him a wire to that effect, that due to a prior commitment I couldn't play the picture. I had consummated a deal for HIT THE DECK, which I knew I could play following TONIGHT'S THE NIGHT.

A. When did I consummate the deal for HIT THE DECK, sir?

Q. Well, that is what you testified to.

A. Isn't there something about a couple of days in there, sir?

Q. Yes, may I read that to you again?

A. Yes, please.

Q. And that afternoon—this is the afternoon of the same conversation.

You said:

> Well, I think it was the same afternoon or maybe a couple of days later I sent him a wire.

Is this the wire that you sent him?

A. Yes.

Q. You sent him a wire to that effect, that due to a prior commitment I couldn't play the picture. I had consummated a deal for HIT THE DECK, which I knew I could play following TONIGHT'S THE NIGHT.

A. Well, I had consummated is not right, because I think the records will show that I had not consummated a deal for

(2424)

HIT THE DECK, on February 13th, the date of this wire.

Q. Then what you are telling us is that you made—

A. It is an error—

Q. —a false statement.

A. —definitely.

Q. You made a false statement?

A. It is an error, it is not a false statement, sir. It is an error there, because I did not have the deal on this. And

this was all with reference to TONIGHT'S THE NIGHT with Mr. Mansell and Mr. Beilan.

Q. Now, Mr. Wren, just listen to me: When you said that you had sent him a wire, that due to a prior commitment you couldn't play the picture, you had consummated a deal for HIT THE DECK, that was not correct?

A. No, sir, the consummated the deal on the same day is not correct, no, sir.

Q. And therefore you want to take this back. All right.

A. I certainly do, sir.

Q. Now, you said that you were troubled about your five-week commitment on TONIGHT'S THE NIGHT and couldn't make an offer for EAST OF EDEN on March 7th because of that commitment?

A. Yes, sir.

Q. You said that?

(2425)

A. Yes, sir.

Q. Now, when did you decide that you would be able to terminate that engagement?

A. I don't know, sir. The picture hadn't opened as yet.

Q. It was before you acquired HIT THE DECK, wasn't it?

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. Well, do you know when you made your offer for HIT THE DECK?

A. No, sir, I do not.

February 25th, sir.

Q. All right. Is that correct? Does that refresh your recollection?

A. Yes, sir.

Q. Now, you notified Warner Bros. on February 14th.

A. 13th, sir.

Q. Was it the 13th? All right.

A. Yes.

Q. Whatever that date was. I thought the wire said the 14th. That you would not make an offer because of a prior commitment, and then you did make an offer for HIT THE DECK on February 25th.

A. Yes, sir.

Q. Whatever that date was. I thought the wire said the 14th. That you would not make an offer because of a prior commitment, and then you did make an offer for HIT THE DECK on February 25th.

A. Yes, sir.

(2426)

Q. Did you during that interval go to Warner Bros. and say: I have worked out my problem with TONIGHT'S THE NIGHT, I am going to terminate that engagement and I would now like to make an offer on EAST OF EDEN?

A. No, sir. They told me unless I played the picture March 7th I couldn't get the picture, and I sent them a wire saying that due to our prior commitment I could not open the picture on March 7th. So why should I go to Warner Bros. any longer? They told me the picture had to play March 7th.

Q. But when you found that you could open another picture on March 9th you didn't go to Warner Bros. and say: My situation has changed, I would now like to submit an offer on your picture; did you?

A. Of course not, sir.

Q. Of course not.

Mr. Sawyer: Let me see the offer on HIT THE DECK.

(Mr. Goffman hands paper to Mr. Sawyer.)

By Mr. Goffman:

Q. And you in fact played HIT THE DECK, as you testified, from March 10th, 1955, to April 13th, 1955.

A. Right, sir.

Q. Which is the same period you would have played EAST OF EDEN if it had been available to you on March 7th?

(2427)

A. I don't know how long I would have played EAST OF EDEN, sir.

Mr. Goffman: All right.

I believe I have offered D-68 in evidence.

By Mr. Goffman:

Q. Now, Mr. Wren, I have gone over with you I believe all of the Warner Bros. pictures that were mentioned in the examination here with the exception of four pictures, and I would just like to mention them to you.

One is BAD SEED.

A. Yes, sir.

Q. Another is TOWARD THE UNKNOWN?

A. Yes, sir.

Q. Another is GIANT?

A. Right, sir.

Q. And the fourth is BABY DOLL?

A. Yes, sir.

Q. And you made offers on all those four pictures?

A. I believe we did.

(2428)

Q. Now, BABY DOLL was awarded to you?

A. Yes, sir.

Q. So that you one of those four. GIANT was awarded to the Mastbaum, to Stanley Warner's Mastbaum, wasn't it?

A. Yes, sir.

Q. And TOWARD THE UNKNOWN was awarded to the Goldman?

A. The Goldman Theatre?

Q. Yes, wasn't it?

A. Yes, it was awarded to the Goldman chain. I am not sure which.

Q. Well, one of the Goldman Theatres?

A. Right, sir.

Q. And BAD SEED was awarded to the Mastbaum?

A. Right, sir.

Q. So of those four pictures you got one, Goldman's three theatres got one, and Stanley's three theatres got two, both of which went to—

A. No, Stanley's Mastbaum got two, sir.

Q. Stanley's Mastbaum got two?

A. The Mastbaum.

Q. But Stanley had three theatres.

A. Well, yes. Yes, that is right.

Q. Now, one other question, and I will be finished with you, Mr. Wren.

(2429)

A. All right, sir.

Q. You have talked about the picture SEA CHASE.

A. Yes, sir.

Q. Do you recall it?

A. Yes, sir.

Q. That was another John Wayne picture?

A. Right, sir.

Q. It also had Lana Turner?

A. That I have forgotten.

Q. You have forgotten. It also had Tab Hunter, do you remember that?

A. That was easy to forget.

Q. But it was a pretty decent picture, wasn't it?

A. Yes, sir.

Q. By your test of hindsight and national film rental it was better than two million dollars, wasn't it?

A. I will take your word for it, sir.

Q. And that was a Decoration Day release, May 30, 1955, wasn't it?

A. I don't know.

Mr. Goffman: Will you mark this.

(A telegram from Jay Wren to Warner Brothers, dated April 18, 1955, was marked Defendants' Exhibit 69 (Warner Bros.) for identification.)

(2430)

By Mr. Goffman:

Q. D-69, a wire you sent Warner Brothers in connection with the picture SEA CHASE, and will you note in it the fact that it was the Decoration Day release for 1955, as you stated it.

A. Right, sir.

Q. Now, when you testified several days ago, for Mr. Sawyer, you stated some complaint about a delay in the screening of this picture. Do you remember that?

A. They refused to screen it for me.

Q. They refused to screen it for you?

A. Yes, sir.

Q. And therefore you wrote this telegram?

A. Yes, sir.

Mr. Goffman: All right, I offer it in evidence and I would like to read it, Your Honor. It is the last one.

This is a telegram addressed to Warner Brothers, April 18, 1955:

On Friday, April 15, 1955, you advised the sender by telephone that your company was soliciting offers from first-run Philadelphia exhibitors for license to exhibit the motion picture THE SEA CHASE; that the subject attraction was to be shown starting Decoration Day, and that offers for the SEA CHASE were

(2431)

to be submitted on or before Tuesday, April 19, 1955.

Further, you advised us that there were no prints of the SEA CHASE available at this time, and that neither we nor any of the other first-run exhibitors or their representatives would be afforded the opportunity to screen the SEA CHASE before the last day on which your company would consider offers, i.e., Tuesday, April 19, 1955.

Again, we wish to advise you, that the Viking Theatre refuses to submit offers for licenses to exhibit first-run motion pictures until such time as we have had an opportunity to screen and evaluate the motion pictures for which you solicit offers.

Regards,

Jay Wren,
General Manager.

* * *

Q. You sent that telegram in connection with your failure to get a screening on SEA CHASE, isn't that right? (2432)

A. That is what it says, sir.

Q. And then they arranged a screening for you, didn't they?

A. It wasn't that simple, but they did, yes, sir.

Q. They did?

A. Yes, sir.

Q. And you saw the picture?

A. Yes, sir.

* * *

(2443)

Mr. Goffman: Will you mark that, please.

(Letter dated May 2, 1955, from Warner Brothers to Mr. Jay Wren was marked Defendants' Exhibit 70 (Warner Brothers) for identification.

(Telegram dated May 10, 1955, from Mr. Jay Wren to Warner Brothers was marked Defendants' Exhibit 71 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. Now, Mr. Wren, after you saw SEA CHASE Warner Brothers wrote you this letter, D-70, on May 2, 1955, asking you whether you were interested in making an offer for that picture, didn't they?

A. Yes, sir.

Q. And you have already testified here that by that time, by the time the screening was arranged and the offer was solicited, it was too late, you had another picture?

A. Yes, sir.

Q. Do you recall that?

A. If I said that, yes, sir.

Q. Well, don't you recall it?

A. No, I don't recall it. Did I say that just now?

Q. I see. Not just now; when you testified on your direct examination.

A. If I said that, yes.

(2444)

Q. Well, let's get it on the record.

A. I believe—

Q. I am reading to you from page 895 of your testimony. After a question had been directed by Mr. Sawyer to you and there were some objections, this was your answer, referring to SEA CHASE.

"At the time the screening was arranged and the offer solicited, it was too late; we had another picture." Remember that testimony?

A. Yes, sir.

Q. All right. And you sent a wire to Warner Brothers on May 10 telling them that you had another commitment so that you couldn't make an offer on SEA CHASE, and is that the wire?

A. Yes, sir. Is it May 10?

Q. Yes.

Your Honor, may I read this last wire?

The Court: Yes.

Mr. Goffman: This is D-71 to Warner Brothers, dated May 10:

"Due to prior commitments, namely, the motion picture THE PRODIGAL and NOT AS A STRANGER, the Viking Theatre is unable to submit an offer for a license to

(2445)

exhibit the motion picture THE SEA CHASE first run Philadelphia. However, the management of the Viking Theatre desires to continue to be afforded"—and so forth.

You sent that wire?

A. Yes, sir.

Q. Now, did you in fact play PRODIGAL on the Decoration Day holiday that year?

A. Yes, sir.

Q. Didn't you?

A. Yes, sir.

Q. In fact, you played it from May 11 to June 23, 1955?

A. Yes, sir.

Q. So that in view of THE PRODIGAL you couldn't have played SEA CHASE; isn't that right?

A. I so indicated.

Q. And that is what you said in this telegram?

A. That's right.

Q. Now, isn't it a fact that you had already been committed to play PRODIGAL when you made your request for a screening for SEA CHASE on April 18, 1955?

A. I don't know, sir.

Q. You don't know?
A. No, sir.

(2446)

Q. Well, maybe I can help you with that.
Mark this letter, please.

(Letter dated April 6, 1955, to Louis Formato from Jay Wren was marked Defendants' Exhibit 72 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. Is this D-72—

Mr. Sawyer: Well, I object to that, Your Honor. This is the bid, not the license.

Mr. Goffman: I will come to that.

By Mr. Goffman:

Q. Is this D-72 your offer for the picture PRODIGAL?
A. It looks like it, yes, sir.
Q. And what is the date of that?
A. April 6, 1955.

• • •

(2447)

Q. That is a fact, isn't it, that this offer for PRODIGAL is on April 3, fifteen days before your April 18 telegram to Warner Brothers asking for a screening on SEA CHASE; isn't that right?

A. I said it was.
Q. All right.
Now, will you mark this.

(Letter dated April 15, 1955, to Mr. Jay Wren, signed "Sincerely" was marked Defendants' Exhibit 73 (Warner Brothers) for identification.)

By Mr. Goffman:

Q. Now, I show you D-73 and ask you if this is the acceptance from Loew's of your offer for the PRODIGAL.

A. It looks like it, yes, sir.

(2448)

Q. And what is the date of that?

A. April 15, 1955.

Q. April 15th?

A. Right, sir.

Q. So that your offer for the PRODIGAL, your Decoration Day attraction, was accepted on April 15, 1955; isn't that right?

A. Does it say anything here about Decoration Day attraction?

Q. I am asking you if that is not so.

A. I am not going to say it is a Decoration Day attraction when it has nothing in here whatsoever about Decoration Day attraction in any of these letters, in the bid, the acceptance. There is nothing in here with Decoration Day, sir.

Q. Hadn't you promised to play that on Decoration Day following GLASS SLIPPER?

A. I don't know what I promised to do, sir.

Q. Didn't you? Don't you recall?

A. No, sir, I do not.

• • •

(2451)

Q. Does that refresh your recollection that PRODIGAL was intended to follow GLASS SLIPPER by you when you made the offer for that picture and it was accepted by Loew's?

A. I don't know, sir.

Q. That doesn't refresh your recollection?

A. Not to me, no, sir.

Q. All right. Let me have it back.

Now, didn't you in fact tell Warner Bros. that you couldn't bid on SEA CHASE because you had PRODIGAL

(2452)

to play on Decoration Day?

A. I sent the wire about PRODIGAL and NOT AS A STRANGER, sir. I have admitted that as it is written there. I have, yes, sir.

Q. That is right. So that you could not play SEA CHASE because you had PRODIGAL?

A. And NOT AS A STRANGER.

Q. And NOT AS A STRANGER?

A. Naturally.

Q. Fine. And you had PRODIGAL for Decoration Day and played it, then, didn't you?

Mr. Sawyer: I object to that, Your Honor. He should show the witness the license agreement. That's what he is bound to.

By Mr. Goffman:

Q. You played PRODIGAL on Decoration Day, didn't you?

A. I believe we had gone over this, sir. PRODIGAL played 5-11 to 6-23.

Q. Right.

A. I believe you asked me this before, sir.

Q. And you already had the acceptance from Loew's as to PRODIGAL when you sent this wire?

A. I had sent a telegram, yes, sir, saying that I had THE PRODIGAL, I had NOT AS A STRANGER. I have admitted that,

(2453)

sir.

Q. Right. So that it would have been more accurate for you to say on April 18, 1955, to Warner Bros. that you

had PRODIGAL for Decoration Day and, therefore, couldn't play SEA CHASE in any event, wouldn't it?

A. I don't know that it would, no, sir.

Q. Well, it is a fact that you had played it on Decoration Day?

A. Yes, sir.

Q. And it is a fact that you had it committed to you by Loew's before you sent this telegram of April 18, 1955; isn't that right?

A. Let me see that telegram, sir? Now, this April 18th telegram, sir, only has to do with my not being afforded a screening.

Q. That is right, but on April 18th, you already had PRODIGAL, didn't you?

A. What has that got to do with my being afforded a screening?

Q. Just answer my question. You already had PRODIGAL, didn't you?

A. From what you indicated, I already had PRODIGAL.

Q. That is indicated from these two documents that you have just looked at, isn't it?

(2454)

A. Not necessarily, sir.

Q. Well, isn't it indicated from these two documents, D-72 and D-73?

A. April 15th, yes, sir.

Q. And that is before April 18th?

A. Yes, sir.

(2455)

SIXTEENTH DAY

• • •

(2457)

JAY WREN, resumed.

CROSS-EXAMINATION (Continued)

• • •

Mr. Young: Your Honor, I am not going to cover any ground that Mr. Nizer covered as to Twentieth Century-Fox, but I hope you will indulge me from time to time if I have

(2458)

to advert to that testimony by way of summary. I will not cover the same ground, but you are aware that my client, the Fox Theatre, played Twentieth Century-Fox pictures during this time.

By Mr. Young:

Q. Now, Mr. Wren, my question to you is if you recall your testimony in answer to Mr. Nizer's question about the number of Twentieth Century-Fox pictures that you bid or negotiated for. There were 14 all together, is that not correct?

A. I believe that is correct.

Q. There were 11 bids. Of the 11 you won five—

• • •

Q. I said you won five, the Fox won five, and the Mastbaum

(2459)

won one of the 11 bids. Isn't that right, Mr. Wren?

A. I am not sure about the Mastbaum and the Fox.

Q. You won five, didn't you?

A. Yes.

Q. Now, on your direct examination do you recall testifying about THE LEFT HAND OF GOD?

A. Yes, sir.

Q. In your testimony there at pages 899 to 901 you were telling the Court and jury about being in Mr. Diamond's office and a representative of the Fox Theatre was there and you were there.

A. Not in Mr. Diamond's office, in Mr. Bettinger's office, sir.

Q. Bettinger, that is right. Mr. Diamond was on vacation at that time. Isn't that right?

A. Yes, sir.

Q. And I just want to ask you to clarify one statement that you made because there was an interruption and you had previously testified that Diamond was in Florida.

A. Yes, sir.

Q. And that "in my presence"—that is Mr. Wren's presence—"in the presence of others, he," Bettinger—"called New York City to tell them that he"—Bettinger—"had had the bids

(2460)

before him and that in his opinion"—that is, Bettinger's opinion—"the Viking Theatre should be awarded the picture, at which time Bettinger was advised that Stanley Warner knowing Mr. Diamond"—then you were interrupted.

Knowing Mr. Diamond was on vacation, I assume. Is that right, sir?

A. Yes, sir.

Q. Thank you, sir.

Mr. Wren, you testified also in direct and on cross-examination about the icture THE SEVEN CITIES OF GOLD, which was a picture that Twentieth Century-Fox put up for bidding, and instead of bidding you asked to negotiate.

A. Right, sir.

Q. In a telegram dated, I believe, September 12, 1955?

A. I am not sure of the date.

Q. That was your testimony at page 1736 and 1739 where you asked to negotiate but refused to bid. Is that right?

A. I asked to negotiate.

Q. Right. But isn't it a fact that at this time, during this period in September, 1955 that you had bids in on DESERT SANDS?

A. I did not have any bid on DESERT SANDS.

Q. And also on LUCY GALLANT. You got both of those pictures?

A. But LUCY GALLANT was much before this.

(2461)

Q. You had a bid on GENTLEMEN MARRY BRUNETTES?

A. I am not sure, sir.

Q. That is Plaintiff's Exhibit 82.

A. May I see it, please?

Q. I will show you my copy.

A. May I see the telegram, please, to Fox, about negotiating?

Q. I don't have that. That was just your testimony. You testified to that.

A. Well, you mentioned the telegram.

Q. This is just a factual question. I am asking if you did not bid on GENTLEMEN MARRY BRUNETTES. The answer is yes, isn't it?

A. That is right. But you said, "at this time."

Q. September of 1955.

A. This is September 24, 1955, and I would like to know what period, what day we are talking about in September.

Q. Your bid was not on September 24th.

A. I am speaking of the letter on top.

Q. That is the other part.

A. 9-8-55.

* * *

(2462)

Q. But on September 7, 1955 you had bid for BLOOD ALLEY. Isn't that right?

A. No, sir. If I see the bid, I can tell you.

Mr. Young: That is Exhibit 39, Mr. Sawyer. Will you check that just to be sure.

The Witness: September 7.

By Mr. Young:

Q. That is right.

A. Yes, sir.

Q. If you look at that, you bid for a three-weeks' run.

A. That is right, sir.

Q. Now, on September 20 you submitted a bid on DESPERATE HOURS, didn't you?

A. If that is the date.

Q. That is what the record shows. You did bid on DESPERATE HOURS?

A. Yes, sir.

(2463)

Q. And all this was in September?

A. Yes, sir.

Q. Now, Mr. Wren, if a distributor has a picture ready for licensing on first-run and he sends out offers, requests to bid, he puts up a picture for bid and receives only one bid, it does not make an difference who it is from, Viking, Arcadia, or whoever, but nobody else bids.

A. Yes, sir.

Q. Now, if the distributor accepts that bid nobody else has any complaint, does he?

A. That is right. I have indicated that, sir.

Q. Precisely. Now, Mr. Wren, do you recall on your direct examination reading to the jury the provisions of

the Fox Theatre bid that if the receipts fell to $12,000 or less in a week, that week would be the last week of the run?

A. Yes, sir.

Q. Now, that is not an unusual provision in the contract, is it?

A. It certainly is. I don't recall having seen it prior to that bid, sir.

Q. But you have seen it since?

A. I don't recall. I don't think so.

Mr. Young: Would you produce, Mr. Steinberg—I requested it yesterday—the license agreements of the

(2464)

Viking Theatre for the LAST WAGON and TEEN AGE REBEL. I can show him copies I have obtained myself.

By Mr. Young:

Q. I will show these to you, Mr. Wren.

A. Yes, sir.

Q. You see the provision in there that if the receipts on any week fall below $10,000 or less that is the last week of the run.

A. It is not $12,000.

Q. $10,000.

A. Yes, sir. You said $12,000.

Q. I meant $10,000.

A. Yes, sir.

Q. So on your bid when you were being awarded the pictures you were quoted the same right to take the picture off if the receits fell below the figure you specified of $10,000?

A. Yes, sir.

(2465)

Q. Now, that is $10,000 for your theater. The Viking that has 1017 seats, and $12,000 for the Fox Theatre, which has 2400 seats; isn't that right?

A. I haven't indicated that, sir. The Fox might put in if the week fell below $5000. I am not saying that that is the scale for the Fox Theatre. The Fox can bid as they see fit.

Q. I am not talking about scales. Please, please, don't argue with me. Answer my question.

A. All right, sir.

Q. Your theater has 1017 seats and your provision was $10,000; if it doesn't reach $10,000, then that is the last week; is that right?

A. Yes, sir.

Q. It is the contract?

A. Yes, sir.

Q. And the Fox Theatre has 2422 seats?

A. Yes, sir.

Q. That is more than twice as big?

A. Right, sir.

Q. And the provision on this bid was if the receipts in any are $12,000 or less, that is the last week; isn't that right?

A. That is right, sir.

Q. All right.

(2466)

Now, Mr. Wren, I just showed you the license agreement on LAST WAGON, a photostat of it. You recognize that, don't you?

A. Yes.

Q. (continuing) As the license agreement?

A. Yes, sir.

Mr. Young: Now, Mr. Sawyer, we will need that stipulation. I wonder if you would hand it to the witness, please.

Mr. Sawyer: I am sorry.

Mr. Young: The stipulation showing the national film rentals.

Mr. Sawyer: You mean the list?

Mr. Young: Yes.

Mr. Sawyer: Is this Fox?

Mr. Young: Yes, Twentieth Century-Fox.

By Mr. Young:

Q. This is what your counsel has given me. I am sure that is the same one, Mr. Wren. Now, that picture had a national gross film rental, national film rental of $1,356,000, did it not?

A. What picture, sir?

Q. THE LAST WAGON.

A. Oh, THE LAST WAGON?

(2467)

Q. Right.

A. Yes, sir.

Q. And you bid for that picture and you won the picture, didn't you?

A. Yes, sir, so the license agreement indicates.

Q. Yes, that is right.

Now, that is the picture which you took off after one week, isn't it?

A. Yes, sir.

Q. You played it one week?

A. Right, sir.

Q. Although you testify that Twentieth Century-Fox repeatedly—this is your language, repeatedly asked you to keep it on; isn't that so?

A. Yes.

* * *

(2468)

Q. You terminated the run?

A. Yes, sir, according to the provision in the license agreement.

Q. And the distributor asked you to please keep it on another week, isn't that right?

(2469)

A. Yes, sir.

Q. Well, that is all. And then you put in the POWER AND THE PRIZE; that is the next picture. If you will look on your 176 you will find that that is so.

A. Yes, sir.

Q. Now, that had a national gross of only—a national film rental of only $568,000, did it not?

• • •

Mr. Sawyer: We will take your word for it.

Mr. Young: You know I would not mislead you, but I am sure that is right.

Give the witness, please, your Exhibit 176, if you have it.

Let us give him this one.

By Mr. Young:

Q. You know, that is the one you testified.

A. I have a sheet.

Q. Oh, you have this?

(2470)

A. Yes, I have this.

Q. Well, that is 176.

A. Mine is not marked 176, Mr. Young.

Q. I am sorry, I thought you knew what I was talking about.

A. No, sir, I did not.

Q. Look at THE POWER AND THE PRIZE.

A. Yes, sir.

Q. Now, LAST WAGON, the one that you received, grossed $8,980, didn't it?

A. Yes, sir.

Q. And you took the picture off, right?

A. Yes, sir, I said that.

Q. But THE POWER AND THE PRIZE grossed $8085; that is less, isn't it?

A. Yes, sir.

Q. And you played it the second week, and the second week it grossed $5048, right?

A. Right, sir.

Q. You also licensed a picture called TENAGE REBEL, did you not?

A. Yes, sir.

Q. And you testified on Mr. Nizer's examination that that is what you would call a slough picture?

A. Yes, sir.

(2471)

Q. That is right. Now, look on that list of national film rentals and tell me if that picture did not have a national film rental of $1,324,000.

A. Yes, it did.

Q. Do you recall that the players in that were Ginger Rogers and Michael Rennie?

A. Yes, sir.

(2472)

Q. Now, if you look again at your Twentieth Century-Fox schedule of national film rentals, you will find that there were many other Twentieth Century-Fox pictures that played other theatres that had national film rentals of less han $1,324,000; is that not so?

A. Oh, yes.

Q. The first one I see didn't play the Fox Theatre but played the Randolph, which was LADY which grossed $398,000, right, national film rental?

A. Yes, sir.

Q. And LIFE IN THE BALANCE played the Fox Theatre and grossed only $260,000 national; that was a national film rental, right?

A. Yes, sir.

Q. And VIOLENT SATURDAY grossed less than that. That was $1,266,000; isn't that right?

A. Yes, sir.

Q. There was another one I note that played the Midtown was ANGELA which grossed or had a national film rental of $215,000?

A. Yes, sir.

Q. THE LIVING SWAMP played the Fox Theatre and that had a national film rental of only $121,000; isn't that correct?

A. Yes, sir.

(2473)

Q. That was sort of a documentary film, wasn't that?

A. I was going to ask you for the cast, sir.

Q. But that was a national film rental?

A. Yes, sir.

Q. And the only other one I see at another theatre was MAGNIFICENT MATADOR at the Midtown which was $941,000.

Then we go down to another picture at the Fox, THE VIRGIN QUEEN, $640,000?

A. Yes.

Q. That was a Bette Davis picture, was it not?

A. I don't recall, sir.

Q. And then THE SEVEN CITIES OF GOLD was $888,000 at the Fox Theatre?

A. Yes, sir.

Q. Then comes THE DEEP BLUE SEA. That is taken from a novel by Nicholas Monserrat, isn't it?

A. I wouldn't know, sir.

Q. $354,000? Well, that was a national film.

Now THE MAN WHO NEVER WAS played the Fox Theatre and it had a national film rental of $997,000; right?

A. Yes, sir.

Q. And then we come to a very interesting picture TWENTY-THREE PACES TO BAKER STREET, had $747,000?

(2474)

A. Yes, sir.

Q. We all know who was the most famous resident of Baker Street, don't we? That was Sherlock Holmes.

A. Oh, it is?

Q. 221-B Baker Street.

And MOHAWK, that played the Fox Theatre?

A. Yes, sir.

Q. $673,000?

And HILDA CRANE, $604,000.

A. Right, sir.

Q. So that the Fox Theatre played ten pictures with a smaller national film rental than TEEN-AGE REBEL; isn't that right?

Now, this word—you played, you call it—ABDULLAH'S HAREM?

A. Yes.

Q. I call it ABDULLAH, you know, like the song "Abdullah, Bull Bull Emir." We know it is the same one.

A. We will take your—ABDULLAH, sir.

Q. ABDULLAH'S HAREM and THE QUEEN OF BABYLON had a combined film rental, national, of $397,000; isn't that right?

A. I will take your figure, sir.

Q. Well, it is right.

A. All right, sir.

(2475)

Q. And LIFE IN THE BALANCE and THE LIVING SWAMP played together at the Fox Theatre with a national film rental of only $389,000?

A. Right.

Q. Which is less?

A. Right.

Q. Than the other two pictures?

A. Yes, sir.

• • •

Q. To summarize now, of the 45 Twentieth Century-Fox pictures, you bid or negotiated for 14 and you played 8; right?

A. I accept your figure, sir.

Q. Well, that is correct.

A. All right, sir. I am accepting your figure.

Q. All right. Now, after you became associated with the Viking on March 1, 1955, you were never denied an opportunity by Twentieth Century-Fox to bid or negotiate one or the other for Twentieth Century-Fox pictures, were you?

A. I don't recall. At what date, sir? It was after the

(2476)

visit of Mr.—

Q. Well, wait a minute. You came to the Viking on March 1, 1955?

A. Yes, sir. I indicated I was soliciting, I mean, trying to get pictures before that, sir. I don't know exactly.

Q. I will go back to January if you want to.

A. I don't know exactly when Mr.—

Q. As long as you have been with the Viking, my question is, you were never denied an opportunity by Twentieth Century-Fox to bid or negotiate one or the other for Twentieth Century-Fox pictures and that is true, isn't it?

A. I haven't said I was, sir. I have said I am not sure of the date.

Q. The answer is yes?

A. I am not sure of the date when we first—

Q. But you were never denied an opportunity?

A. No, sir, not from that point, on, no, sir.

Q. And the Fox Theatre—now, this is my question—never prevented you from bidding or negotiating, one or

the other, for any picture that you wanted to bid on; isn't that right?

A. Except the discussion we had, Mr. Seidenberg and I had, with reference to SEVEN CITIES OF GOLD.

(2477)

Q. Let's not get into Seidenberg. You weren't prevented from bidding on that picture?

A. No, sir, I was not.

Q. That is right.

A. I said "negotiate."

Q. Now, just one other question: I believe about Twentieth Century-Fox you asked for and were granted open bidding by that company, weren't you?

A. Yes, sir.

Q. And if I explain it properly, that means that you and your competitors—bids were opened in the presence of each other, doesn't it?

A. Yes, sir.

Q. That is right. You knew what Fox bid and Fox knew what you bid and whoever else was there?

A. Right, sir.

Q. Now, on your Exhibit 176, that is this little document right here—

A. Right, sir.

Q. —you read to the Court and jury the film rental which was earned by the Viking and the film rental which was actually paid; do you recall that?

A. On what picture?

Q. Any of them.

(2478)

A. Oh, yes.

Q. Start out with the first one.

A. Oh, yes; right, sir.

Q. Now, it is not your claim here, is it, that Viking is the only theatre in this period that paid more film rental

than it actually earned, is it? You don't claim that, do you?

A. I don't understand the question, sir.

Q. All right. Well, it is a very simple question. You claimed, you said, on some of the pictures you paid more film rental than the picture actually earned?

A. That's right.

Q. You don't claim that Viking is the only theatre that did that, do you?

A. I didn't say anything about that.

Q. I know you didn't say it. I am asking you now, do you claim it is?

A. I don't make any such claims.

Q. Right. Now, on the pictures on which you bid and that were nevertheless licensed to the Fox Theatre, you don't claim—and I know you haven't claimed it up till now but you don't claim now—that Fox didn't bid for them, do you?

A. I don't know what Fox bid for these.

Q. You know the Fox Theatre—

(2479)

A. I know Fox bid on pictures. I don't know whether they bid on all of these. No, I don't.

Q. No, on the 5? Oh, yes, you know that.

A. How would I know without some records in front of me?

Q. Mr. Wren, you have had these records for four years. You know that is a fact, now.

A. Now, how do I know? Which pictures are you specifically referring to that Fox bid?

Q. THE KING AND I, you bid on that.

A. Yes, sir.

Q. THE TALL MAN?

A. Yes, sir.

Q. They were awarded on a bid to Fox Theatre?

A. Yes, sir.

Q. CAROUSEL?
A. Yes, sir.
Q. BUS STOP?
A. Right, sir.
Q. And THE BEST THINGS IN LIFE ARE FREE? Don't you wish that were so?
A. Right.

• • •

(2480)

Q. I would like you to forget if you can that you are a vice president and general manager of the Viking. I know that is impossible, but try it, will you? And I want you to just tell me how would you rate the Fox Theatre?
A. Well, I would say it is a fine first-run theatre.
Q. It is a good theatre, isn't it?
A. Yes, sir, yes, sir.
Q. Well-located?
A. I am surprised you gave it up.
Q. I am, too. I wish we still had it.
Now, you don't mean seriously to say that the location of the theatre is not a factor in evaluating bids, do you?
A. It is not as important as the stress that they have put on it here, sir.

• • •

(2481)

Q. Do you think that the Viking's location at 19th and Chestnut is as good as the location of the Fox Theatre on Market Street between 16th and 17th?
A. I do.
Q. You do?
A. Yes, sir.

(2482)

Q. All right. Now, have you ever had a pedestrian survey or a count—you know what a pedestrian count is?
A. Yes, sir.

Q. —made of the amount of pedestrian traffic that passes between 18th and 19th on Chestnut Street?

A. No, no, we have never made that survey, sir.

Q. All right. Now, have you ever had one made on Market Street between 16th and 17th?

A. No, sir, but we had a survey made, sir.

Q. I am talking about a pedestrian survey.

A. I am—

Q. The amount of people.

A. Right, sir.

Q. Right. Now, you have no doubt in your mind as you sit there, there are more people, greater traffic, pedestrian traffic on Market between 16th and 17th than there is on Chestnut between 18th and 19th?

A. Oh, there is more people pass there, there is no question about that, sir. I would concede that, sir.

Q. No question? All right. Now, is it not a fact that the grossing potential, that is, the amount of money that you take in at the box office, isn't that the most important thing to an exhibitor?

A. Yes, sir, the box office is the most important thing to

(2483)

the exhibitor.

Q. Right. Now, in this respect, I want to ask you if motion picture theatres such as the Viking, Arcadia and Fox, if there are not peak hours in theatres just as there are in the traffic coming out of here at 4:30 and the buses and the subways and everywhere? There are peak hours; is that right?

A. Depending on the picture, surely.

Q. Well, of course, you could play something and nobody could attend.

A. Like HOUND DOG MAN.

Q. Like what?

A. Like HOUND DOG MAN.

Q. Nobody forced you to bid that.

A. I didn't say that. That played the Fox Theatre.

Q. What?

A. It played the Fox Theatre with all this foot traffic, sir.

Q. All right.

A. Right, sir.

Q. But there never has been a time, has there, when you could put 2,422 people in the Viking Theatre?

A. You don't know me, sir. I can put 2,400-and-some people with tickets in their hands, not in the Viking Theatre, but I can put tickets in their hands, sir.

(2484)

Q. You are not serious.

A. I am serious, sir.

Q. You never did it, did you?

A. Well, we have had five and six hundred people lined up on 19th Street, sir.

Q. They weren't sitting down inside the theatre?

A. I didn't say they were sitting down.

Q. That is what I am asking you.

A. I said "tickets in their hands."

Q. You can't seat two thirds of 2,422 in that theatre, can you?

A. Two thirds of 4,000?

Q. Of 2,000?

A. Of course, I can't, sir. I can only seat 1,017 people in that theatre, sir.

Q. The Fox Theatre can seat 2,422 people?

A. Right, sir.

Q. Now, we know all about the GRAY FLANNEL SUIT. I want to ask you one question. The suit was not for $31,900; it was for $28,943.10, wasn't it?

A. I indicated that, sir. I said the thirty-one ninety-five was very high.

Q. I am taking this from your deposition just to clear it up so the Court and jury know that, and you claim for the

(2485)

11th week $498 and for the 12th week $934 advertising?

A. I am not sure of the amount.

Q. Well, that was the amount that Mr. Sley testified to on his deposition.

A. Well, I can't—I don't know what Mr. Sley testified to.

Q. You were there.

A. I know I was, sir, but I don't know of the amounts. When was this, 1957?

Q. Accept my word for it and I will let Mr. Sawyer check it.

A. Right, sir.

Q. But the case was settled by paying that amount less those two weeks of advertising; right?

A. Right, sir.

Q. All right. Now, Mr. Wren, one thing you know is you played NOT AS A STRANGER for 12 weeks; right?

A. Yes, sir.

Q. And that picture we know had a national film rental of $6,121,000?

A. I will accept that.

Q. And then we know that you took in at the box office $166,012. It is right there on your slip.

A. I accept that, sir. I am not giving you any quarrel

(2486)

about that.

Q. Talking about Sherlock Holmes, do you know where the title NOT AS A STRANGER comes from?

A. No, sir, I do not.

Q. It is from the book of Common Prayer.

A. I didn't know that, sir.

Q. Just one of the little interesting facts that develop.

A. Thank you.

Q. Now, that picture played, it opened June 30th and played over the 4th of July holiday in 1955.

A. Yes, sir.

Q. And you testified yesterday that you had increased admission prices for the holiday and I assume Saturdays and Sundays; is that correct?

A. The entire engagement, sir.

Q. Right. The entire engagement?

All right. Now, would you turn to Exhibit 176 and tell me what you grossed for the first three weeks on NOT AS A STRANGER?

Well, I will add it up for you, $77,912; roughly $78,000, right?

A. Yes, sir.

Q. And your next highest grossing picture was the GRAY FLANNEL SUIT and your first three weeks of that was $59,398.

(2487)

Would you accept that subject to check?

A. I will accept that subject to check, yes, sir.

Q. Now, you don't have to go into this much more, but you know that those were the two largest grosses of any picture, any two pictures, you played in your first three weeks; isn't that right?

A. I would say so, yes, sir.

Q. Now, this may sound like an obvious question: STRANGER grossed $78,000, GRAY FLANNEL SUIT, $79,000, but do you have any picture in your theatre that grossed $105,000 in the first three weeks?

A. No, sir.

Q. Well, now, look in the Twentieth Century-Fox schedule of national film rentals and see if you see THE KING AND I. It had a national film rental of $653,000, didn't it?

A. National?

Q. $6,000,000.

A. $6,534,000.

Q. $6,534,000?

A. Yes, sir.

Q. And STRANGER, $6,121,000, a comparable picture on the national film rental?

A. Well, I don't throw that $400,000 around lightly, but I will accept that.

(2488)

Q. Well, I will tell you, it is 6.72 per cent more.

A. All right, sir.

Q. And you were aware from the testimony which you read to the jury, are you not, that at least on that picture the Fox Theatre grossed over $105,000 in the first three weeks of exhibition, are you not?

A. I so testified?

Q. You so testified.

A. That it grossed over $105,000? If I said that, right, sir.

Q. Sir?

A. If I said that, yes, sir.

Q. You said it.

And the difference, then, between $105,000 and $78,000 is $27,000?

A. Right, sir.

* * *

(2489)

By Mr. Wolf:

Q. Mr. Wren, of course, in your examination by Mr. Sawyer, you complained about a number of pictures which you said you played at the Viking only because you had not been successful in getting better pictures which you say you tried to get; do you remember that?

A. I believe that is substantially correct.

Q. Just to avoid confusion, let us call the pictures that you did not get "A" pictures and the pictures which you did get "B" ictures. You would understand that that meant that the "A" pictures were pictures which you had tried to get and which you said were superior and the "B" pictures were pictures that you did get and that you said were inferior, all right?

A. Yes, sir.

Q. As a matter of fact, we old-timers used to attempt to

(2490)

divide pictures into "A," "B" and "C" pictures; do you remember?

A. I think you were very successful in doing that.

Q. Maybe that was before your time.

A. Yes, sir.

Q. But I remember very well and we had to give it up because as you have said so often you can't possibly attempt to grade pictures until you have finished playing them and found out what the box-office produces.

A. Yes.

Q. Well, your complaint was that the "B" pictures which you played were inferior in quality to the "A" pictures that you wanted and that these "B" pictures were not the quality that the Viking should have had; is that correct?

A. To a degree, yes, sir, I would say that.

Q. Some of the "B" pictures you even called slough which is about as mean a thing as you can say about a picture. It is like calling a horse a nag and an actor a ham.

A. I think some actors are hams and I think they enjoy the expression.

Q. And the test of quality that you used was the national film rental of the pictures?

A. That's right, sir.

Q. And your point was that you wanted to show as Mr. Sawyer

(2491)

said that Viking was getting markedly inferior products to other theatres; isn't that right? That was your purpose in showing that you got these "B" pictures instead of the "A" pictures?

A. For which we bid and put up money, yes, sir.

Q. I understand that.

A. Right, sir.

Q. And I suppose in the other theatres you included the Stanley Warner houses and you wanted the jury to think that you were being discriminated against because you were getting only "B" pictures and we were getting better pictures; is that right?

A. Well, I thought with regard to the jury and the Court, sir, I thought there would be proof that we were discriminated against, sir.

Q. Isn't that your complaint?

A. Yes, sir.

Q. Now, I am not going into the reasons why you did not get these "A" pictures. The jury has probably heard on your cross-examination by the distributors' counsel enough to understand what they say about the reasons that you didn't get those pictures and I am not going into that at all.

You told Mr. Nizer that you keep a close

(2492)

record on what pictures play each week in all of the ten or eleven first-run theatres that compete with you and you mark down the titles of the pictures and the producers; is that correct?

A. Right, ads.

Q. And so you have a record of the pictures we played at the Stanley houses during the time that you were playing these "B" pictures at the time?

A. I didn't say all my pictures were "B," Mr. Wolf. We didn't say all our pictures were "B" pictures.

Q. I didn't say you did say that. All I asked you was whether you had a record of the pictures that played at our theatres during the time that you played the "B" pictures which you have agreed.

A. I agreed we gave you that record, sir.

Q. I believe we gave you that information, the play-off sheets.

A. Well—

Q. Well, you didn't have to give us the play-off sheets of our theatres; we knew that.

A. I understand, but the records are correct.

Q. All I am saying, you are sufficiently familiar with our play dates to be able to check the pictures which I am going to tell you were playing at our theatres during the

(2493)

time that the "B" pictures which you have referred to were playing at your houses?

A. Right, sir.

Q. This you can do?

A. Yes.

Q. And then I am going to ask you the national film rentals of the pictures you played, these "B" pictures, so-called, and the national film rentals of the pictures we played at our houses during the same time.

Now, if the national film rental of your pictures, these "B" pictures, was higher than the national film rental of our pictures, we would have a more serious complaint than you have, wouldn't we?

A. Not necessarily so, sir.

Q. Well, in other words, you think that if the picture has a lower film rental, it is not a poorer picture?

A. Well, you have had some pictures there—

Q. No, please just answer my question.

A. May I have it again, sir?

Q. The question is whether you have not taken the position right along that the national film rental determines whether a picture is better or poorer for your theatres. Don't you take that position?

A. We have also taken the position that this is hindsight;

(2494)

this doesn't apply at the time you bid for a picture, sir.

Q. I see. So you have been attempting in saying that you had to play "B" pictures instead of "A" pictures to justify that by showing that the pictures that you did not get had a lower national film rental than the pictures that you did get, haven't you?

A. Yes, sir, in some instances, yes.

Q. And I am applying that same measure to the pictures that we got.

A. Right, sir.

Q. That is fair enough, isn't it?

A. Yes, sir.

Q. Now, you will understand I am speaking only about our Stanley Warner houses, that is, the Mastbaum with about 4300 seats, the Stanley with about 3,000 seats and the Stanton with 1400 seats.

Now, if you will please follow my figures and correct me if I am in error, I will be very glad to have you—

A. Excuse me, are these all companies?

Q. Beg your pardon?

A. Are these all companies? I only have the Fox sheet. May I have the other sheet?

Q. What I want you to use really is the play-off sheet

(2495)

of our theatres which you said you have.

A. No, I have given it to you.

Mr. Sawyer: Do you have a chronological list?

By Mr. Wolf:

Q. Well, you follow. Obviously, I am not going to try to deceive you.

A. Good.

Q. Obviously, we all have these figures and names.

A. Counsel has them.

Q. And you may assume that unless I am corrected either now or later I am giving you the correct names and the correct figures.

A. Right.

Q. I want to ask you about a lot of pictures which Stanley Warner played at the time that you played these so-called "B" pictures which you said you played because you had not been successful in getting other pictures which you sought and which were better.

When you played HIT THE DECK which was about a $2,000,000 picture, $2,016,000 picture, we played at a lower film rental the following pictures and you may follow and correct me if I make a mistake either as to the name of the picture or the national film rental of the picture:

(2496)

CHIEF CRAZY HORSE, $1,522,000.

I am not responsible for these names.

CONQUEST OF SPACE, $874,000.

RUN FOR COVER, $1,161,000.

UNCHAINED, $462,000.

REVENGE OF CREATURE, $837,000.

CULT OF COBRA, whatever that means, $376,000.

This was while you were playing HIT THE DECK, $2,016,000, which was one of what we have agreed to call B pictures. Right?

A. Yes, sir.

Mr. Sawyer: Objected to, on CULT OF COBRA.

Mr. Wolf: What is that?

Mr. Sawyer: CULT OF COBRA, double feature.

Mr. Wolf: So what?

Mr. Sawyer: Well, you have to give the total, it is one show, $1,213,000.

Mr. Wolf: $1,213,000, which is still $800,000 less than HIT THE DECK.

By Mr. Wolf:

Q. Now, while you played GLASS SLIPPER we played RUN FOR COVER, $1,161,000.

* * *

(2497)

Q. (continuing) TIGHT SPOT, $593,000.

ESCAPE TO BURMA, $747,000.

Then you played two Universal pictures. We mentioned those before and I don't add them, I just mention that we were still playing for three weeks REVENGE OF CREATURE and CULT OF COBRA, added together, $1,200,000, which you wouldn't have played for five minutes if you didn't have to, would you?

A. I played ABDULLAH'S HAREM instead.

Q. BEDEVILED, $537,000, doubled with GOLDEN MISTRESS, making a total of $900,000.

RAGE OF DAWN and WHITE ORCHID, doubled, making a total of $1,200,000.

All less than your GLASS SLIPPER at $1,381,000,

(2498)

right?

A. Yes, if that is the way it adds up.

* * *

Q. When you played THE PRODIGAL, with $2,181,000 film

(2499)

rental, we played KISS ME DEADLY, $721,000.

HELL'S ISLAND, $687,000.

AIN'T MISBEHAVIN', whatever that means, $725,000.

PRIZE OF GOLD, $705,000.

PURPLE MASK, $723,000.

FIVE AGAINST THE HOUSE, $495,000.

CHICAGO SYNDICATE, $360,000.

FAR HORIZONS, $1,186,000.

RAGE OF DAWN and WHITE ORCHID, together, $1,200,000.

NEW ORLEANS and TRIPOLI together, $600,000.

TALL MAN RIDING and JUMP INTO HELL, $1,300,000.

These all were less in their national film rental than PRODIGAL which you were playing.

A. Yes, sir.

* * *

Q. When you were playing LUCY GALLANT we played at lower national film rentals:

STRANGER ON HORSEBACK, $696,000.

CANYON CROSSROADS, $289,000.

TEENAGE CRIME WAVE, $354,000, doubled with

(2500)

APACHE AMBUSH, $299,000.

* * *

Q. When you were playing RED VELVET SWING—

These are not all the pictures. When I say that you were playing, these are pictures which we have agreed were B pictures; that is, pictures that you told the jury that you played because you had been unable to get better pictures.

A. I said I played B pictures?

Q. I beg your pardon. May I finish.

A. I misunderstood, I am sorry.

Q. Shall I begin again?

A. Yes, sir, but you indicated that I said I played these B pictures. Were you referring to this list or the list—

Q. I was speaking about RED VELVET SWING.

A. Right, sir.

Q. I just had called the name RED VELVET SWING.

(2501)

A. Yes, sir.

Q. And I said, this is one of the pictures that we have agreed, you and I, to call B pictures, meaning pictures that you played because you had been unable to get better pictures that you tried to get.

A. Right, sir.

Q. While you played RED VELVET SWING we played:

SINCERELY YOURS, $692,000.

THREE STRIPES IN THE SUN, $781,000.

QUENTIN DURWARD, $672,000.

HUNTERS OF THE DEEP, $377,000, together with NAKED DAWN, $378,000.

TARANTULA, $971,000, coupled with TURNING WILD, $561,000.

When you played BIG KNIFE we continued to play THREE STRIPES IN THE SUN, which we had carried over, a $781,000 picture, playing the second week.

When you played THE SECOND GREATEST SEX we played LAST FRONTIER, $1,054,000.

I apologize. That is $600,000 more than yours.

TOP GUN, $443,000, with DIG THAT URANIUM.

STORM FEAR, $253,000, coupled with FORT YUMA, $397,000.

HOLD BACK TOMORROW, $168,000—this is about

(2502)

the lowest we have seen, isn't it? And TEXAS LADY, $640,000.

There aren't many more of these, I am glad to say.

When you played ALL THAT HEAVEN ALLOWS, $2,600,000, we played THREE BAD SISTERS, $288,000.

When you played NEVER SAY GOODBYE, we played BATTLE STATIONS, $580,000, and ROCK AROUND THE CLOCK, $1,060,000, which were less than NEVER SAY GOODBYE, national film rental.

When you played RUN FOR THE SUN, and that was $1,002,000, we played SATELLITE, $523,000, and WILDER YEARS, $584,000.

When you played BIGGER THAN LIFE at $491,000, we played VAGABOND KING at $410,000.

When you played ABDULLAH'S HAREM and QUEEN OF BABYLON, we carried over VAGABOND KING for a second week, $410,000, your picture $397,000.

When you played ATTACK, $1,478,000, we played SEVEN MEN FROM NOW, $526,000, and AMAZON, $385,000.

We also played PORT AFRIQUE, $373,000, and CHA CHA BOOM, $207,000.

We also played BURNING HILLS, $1,325,000. When you played LAST WAGON we carried over BURNING HILLS.

Only two more.

(2503)

When you played POWER AND THE PRIZE, $568,000, we played BRIDEY MURPHY, a reissue, $263,000.

A. Pardon me, BRIDEY MURPHY a reissue?

Q. Wasn't it a reissue?

A. No, sir, it was not.

Q. It was not a reissue?

A. It was a Paramount picture first run, sir.

Q. I apologize.

We played BRIDEY MURPHY which, however, grossed nationally only $263,000 against POWER AND THE PRIZE which grossed $568,000.

And we played EDGE OF HELL with that, $103,000.

Finally and lastly, when you played TEENAGE REBEL at $1,324,000, we played BEAST AMAZON, $471,000, and MOLE PEOPLE, double feature, $418,000.

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(2504)

Q. (continuing) I think you will agree with me, Mr. Wren, these pictures, the names of which I have read to you, with their national film rentals, are not the kind of pictures that any first-run theater in the center of a great city would like to play; do you agree?

A. No, I won't agree with that, sir, unless you want to start agreeing on film rental.

Mr. Wolf: I am not an expert. I cannot agree with you on anything, but I am simply asking you whether in your opinion these are picture—

A. At the right price, sir, those are very good pictures.

Q. Very good pictures.

A. Yes, sir, at the right price.

Q. So that in your judgment then, and I wonder if you are going back on your ideas, the national film rentals are not an indication of which are the better pictures?

A. Oh, yes siree, but it is what you pay for the pictures that you get as opposed to what I had to pay for the pictures I got, sir.

Q. Well, you were telling us, as I thought before, that you were complaining that you didn't get the pictures that

(2505)

you wanted and had to play poorer pictures, and to prove that you were telling us what the national film rentals were. You weren't saying anything about what you paid for them, were you?

A. No, but I am just saying, when you slough these off as saying, Well, we had to play these pictures, you indicate that you paid the same amount that I did for TEENAGE REBEL.

Q I haven't indicated anything at all about what we paid. I haven't mentioned it, neither have you.

A. I stand corrected, sir.

Q. You said before, when you were discussing pictures, some of them that I have mentioned, and some of them of the same kind, that you would agree that a house that played that type of pictures wouldn't be faring very well in first run Philadelphia; is that right?

A. I said that, sir?

Q. Yes, you said that in your depositions.

Well, you still think it, don't you?

A. Well, no, this was your policy at the Stanton Theatre to play this type of stuff.

Q. I see.

A. You were doubling those up.

Q. They at least were—the pictures that I have mentioned are pictures that you wouldn't like to play if you could get

(2506)

pictures, would you?

A. Well, now, QUENTIN DURWARD with Robert Taylor, sir, I would prefer that to TEENAGE REBEL with Ginger Rogers.

Q. I see. Well you are now saying, as we have been saying right along, that the national film rental is not too much of an indication of the quality of pictures?

A. Oh, yes, sir. It is a very good test to determine—you have to have some yardstick on the thing, but when you slough over QUENTIN DURWARD you neglect the cast—the titles themselves don't indicate who is in the picture or anything else the way that you give it.

Q. You mean the national film rental doesn't indicate it all?

A. No, I say just the titles the way you were reading them off, sir—

Q. Yes?

A. —might lead people to believe that there was no one in those pictures.

• • •

(2507)

Q. Now, you will notice that in the pictures which I have spoken about just now I have not mentioned pictures except those that were distributed by the defendants in this case. Is that correct?

A. Yes, sir.

• • •

(2512)

Q. Mr. Wren, Mr. Steinberg I think has checked my figures and my names and he has not discovered any errors, so I think we may assume that the Stanley Warner Theatres did play 45 pictures with lower national film rentals than the pictures that you were playing, NOT AS A STRANGER and MAN IN THE GRAY FLANNEL SUIT, during that time you were playing them.

Mr. Sawyer: I think we did find one.

Mr. Wolf: You did find one?

Mr. Sawyer: That is MOBY DICK, MOBY DICK played the Stanley Theatre, I believe.

Mr. Wolf: Well, please don't misunderstand me. I haven't said there were not pictures that had higher film rentals; I am speaking only for those that had lower film rentals. I am sure you will find those that had higher ones but I am perfectly willing to add that. I mean, MOBY DICK had a lower film rental—

Mr. Sawyer: Than NOT AS A STRANGER.

Mr. Wolf: —than NOT AS A STRANGER.

Mr. Sawyer: FLANNEL SUIT had four and a half million.

Mr. Wolf: Forty-five is perhaps enough; we won't quarrel about one.

(2513)

By Mr. Wolf:

Q. Now, Mr. Wren, I want to talk to you about a different matter, and that the division of the products on which you say that you bid or made offers, from all of the defendant distributors. I am speaking only of the defendant distributors.

By reference to the interrogatories which you signed and filed in this case, I find that there were 75 pictures on which you said that you bid or made offers during the period that you were managing the house and up to the time that this action was begun. Will you accept that figure?

A. Subject to check, sure.

Q. I have in arriving at that figure—

Mr. Sawyer: Which answer is that?

By Mr. Wolf:

Q. —eliminated pictures that were negotiated after you came in and which played after, and I have added the pictures which were licensed during the period that I have mentioned and which played after. That I understand to be in accordance with the views that have been expressed here.

A. I understand, sir.

Q. As to timing.

Now, if I may be permitted to use the

(2514)

blackboard, I will show you and the jury the number of pictures on which you bid or made offers from each of the defendant distributors and what became of those pictures, that is to say, which of them played the Viking and which of them played the Stanley Warner houses.

* * *

Q. Loew's, United Artists, Warner Brothers, Columbia—it is even harder than I thought—Paramount, Universal, RKO and Fox; those are the eight defendant distributors.

* * *

Q. I am going to put in the next column the number of pictures from each of these distributors on which you made bids or offers, as you allege in your interrogatories, and

(2515)

ask you whether there are any errors in what I am putting down. You have the interrogatories before you.

Mr. Sawyer: Well, he doesn't.

Mr. Wolf: You may follow as you will.

Mr. Sawyer: Will you tell me which answer?

Mr. Wolf: The answers to 1 and 4, and those that you played. Those three lists make up the total and I can give you the exact number from each one of those paragraphs.

Mr. Sawyer: All right.

By Mr. Wolf:

Q. You stated, you claimed, that you made bids or offers for thirteen Loew's pictures, so I will put down thirteen; for fourteen United Artists pictures; for ten Warner Brothers pictures; for three Columbia pictures; for eleven

Paramount pictures; for six Universal pictures; for two RKO pictures; and for sixteen Fox pictures, a total of 75.

Now, in the next column—

A. May I see the board, please?

Q. I beg your pardon?

A. May I see the board, please?

Q. Certainly.

A. Thank you.

Q. Now, I will just mark this "Bid." These are the

(2516)

pictures that you say you bid or offered for.

Now, I am going to put in the next column those of these pictures which were licensed to you, those which you got. I will mark this "Licensed."

Loew's, four; United Artists, nine; Warner Brothers, one; Columbia, one; Paramount, two; Universal, four; RKO, none; and Fox, eight.

Mr. Sawyer: Excuse me—

The Witness: May I ask a question, please?

Mr. Wolf: Yes, indeed.

The Witness: Was this Warner picture in the period of the suit, sir?

Mr. Wolf: The one that was licensed before, what is the name of it, BABY DOLL, licensed before the end of the period and played after.

Mr. Sawyer: Yet, but didn't you say—

Mr. Wolf: I beg your pardon?

Mr. Sawyer: Excuse me, Mr. Wolf, but didn't you state you were excluding pictures licensed during the suit but played after in your total of 75?

Mr. Wolf: No, I said at the beginning I was eliminating those which have been licensed before Mr. Wren went in.

Mr. Sawyer: And does this 75 include pictures
(2517)

licensed during the suit but which played afterwards?

Mr. Wolf: Yes, indeed.

By Mr. Wolf:

Q. So this makes a total of 29 which you got.

Now, I am now going to put in the next columns the names of our three theaters, Mastbaum, Stanley, Stanton, and I am going to show the number of these pictures on which you bid or made offers which came to our houses:

Loew's, one to the Mastbaum, none to the Stanley, one to the Stanton.

United Artists, none to the Mastbaum, one to the Stanley—that was MAN WITH THE GOLDEN ARM about which you have raised no questions—

A. Pardon me, Stanley Theatre, THE MAN WITH THE GOLDEN ARM?

Q. Pardon me, I am wrong; I mean that went to the Stanton Theatre.

A. Yes, sir.

Q. That is right. I am glad you are following me so closely.

A. But you still have one under the Stanley there.

Q. Pardon me?

A. You still have one under the Stanley.

Q. One at the Stanley, one United Artists, that's right. There was one United Artists at the Stanley.

A. Right.

(2518)

Q. Warner Brothers, there were three at the Mastbaum, none at the Stanley, and two at the Stanton.

Columbia, there was one at the Mastbaum, none at the Stanton, and none at the Stanley.

Paramount, there was one at the Mastbaum, one at the Stanley, and one at the Stanton.

Universal, there were two at the Mastbaum, my list shows, two at the Mastbaum, none at the Stanley, none at the Stanton.

RKO, there was none at the Mastbaum, there was one at the Stanley, and none at the Stanton.

Fox, there was one at the Mastbaum, none at the Stanley, and none at the Stanton.

So adding these I find there were nine at the Mastbaum of all the distributors, three at the Stanley of all the distributors, and five at the Stanton, a total of seventeen, that's right, a total of seventeen of the pictures for which you made a bid or offer which played at the three theaters that we have or an average of a little less than six per theater against 29 that were licensed for your one theater.

Is there any error in my figures that you observe?

A. No, sir.

• • •

(2519)

Q. I will ask you just a very few questions and we will be through.

A. All right, sir.

Q. During the period that you were the manager of the Viking and part of the time an officer, did Stanley Warner or any of its people ever tell you what pictures you should bid or negotiate for?

A. I don't believe so.

Q. Did they ever tell you how much you should offer to any distributor for a picture?

A. No.

(2520)

Q. Did they ever tell you when or how long you should play any picture?

A. No, sir.

Q. Now, we have called for all letters which you received from Stanley Warner during the period which is

involved in this suit and copies of all letters or telegrams that you sent to Stanley Warner during the period of this suit. Was there any such letter or telegram?

A. Well, if there was, my counsel would have it, sir.

Mr. Wolf: Is there any, Mr. Sawyer?

Mr. Sawyer: I just totally—A letter from Stanley Warner?

Mr. Wolf: Letters from Stanley Warner to Mr. Wren.

Mr. Sawyer: Telling him how to bid?

Mr. Wolf: I didn't ask what they were for. I asked for any letters on any subject.

Mr. Sawyer: Between the Viking and the Stanley Warner Theatres?

Mr. Wolf: Yes. There are none?

Mr. Sawyer: I certainly would not know.

By Mr. Wolf:

Q. So that during all of this period during which there were so many telegrams and so many letters which have been

(2521)

produced, exchanged between you and the various distributors, there was not one letter or telegram that you sent to Stanley Warner on any subject; is that correct?

A. Not to my knowledge, sir.

Q. Complaints or any other thing? I mean, there was no letter or telegram in which you complained to Stanley Warner about anything that it had done or omitted to do; is that correct?

A. I don't recall any, sir.

Q. In fact, the first complaint that was made against Stanley Warner with respect to the disposition of pictures

in the central part of Philadelphia first run in writing was when you filed your suit against Stanley Warner making it one of the defendants in this case; isn't that true?

A. I would have to check that, sir. I am not certain.

Q. Can you think of any?

A. Counsel may have sent a letter.

Q. What?

A. Counsel may have sent a letter to you. Our previous counsel may have sent a letter prior to instituting suit.

Q. To whom?

A. To Stanley Warner.

Q. To Stanley Warner?

A. They may have. I am not certain; I would have to check.

(2522)

Q. You don't say they did?

A. I say I would have to check.

* * *

By Mr. Rome:

Q. Mr. Wren, would you agree that public transportation is a matter of importance in so far as first-run motion picture

(2523)

theaters are concerned in Philadelphia?

A. Public transportation?

Q. Yes.

A. Oh, certainly. It has to do with business in general, first run Philadelphia.

Q. But particularly it has to do with motion picture exhibition of films on first run in Philadelphia. You would agree with that, would you not?

A. What do you mean "particularly it would have to do?" I can't agree that public transportation would particularly have to do with first run—if I understand you correctly—with first-run motion pictures.

Q. Would you not agree that patrons of first-run theaters frequently make use of public transportation?

A. Yes, sir.

Q. And, therefore, public transportation and the means of public transportation is a matter of importance to a first-run theater in Philadelphia?

A. Yes, sir.

Q. You know, of course, do you not, that the Midtown Theatre which is operated by William Goldman Theatres, Incorporated, is located just a few doors away from Broad and Chestnut Streets?

A. Right, sir.

(2524)

Q. And right at Broad and Chestnut Streets there is the entrance and exit to the Broad Street Subway?

A. Yes, sir.

Q. And, similarly, those staircases give access to the concourse which runs north and south on Broad Street?

A. Yes, sir.

Q. And, hence, it can give access underground to the Locust Street Subway as well?

A. I will accept that, yes, sir.

Q. And, similarly, to the Broad Street Subway?

A. Yes, sir.

Q. And also to the Suburban Station of the Pennsylvania Railroad?

A. Sure, sure.

Q. And the Reading Station of the Reading Railroad?

A. That I am not certain about. I will accept that.

Q. Thank you.

And it similarly gives access underground, in the event of inclement weather, to the Sheraton Hotel through the concourse around City Hall underground to the Suburban Station and the Sheraton Hotel?

A. Are you speaking—

Q. You know that to be the fact?

A. Are we speaking of the period of the suit?

(2525)

Q. I am asking you whether that isn't the fact during that period.

A. The Sheraton Hotel was not there, was it, sir?

Q. If you tell me it wasn't, then I will accept that, Mr. Wren.

A. No.

Q. The concourse gave access underground to the Bellevue-Strafford Hotel?

A. Yes.

Q. And it also gave access to the Frankford Elevated-

A. Yes, sir.

Q. Similarly, the Midtown is located just a few steps away from the bus stop on Broad Street which runs north and south?

A. I will accept that, yes, sir.

Q. And also to the bus stop which runs east on Chestnut Street?

A. Yes, sir.

Q. That is the same bus, of course, that stops near the Viking Theatre?

A. Yes, sir.

Q. You would wish me, of course, to mention that, would you not, sir?

A. Thank you.

Q. Because it is a matter of importance to your theater?

(2526)

Now, the Goldman—

Mr. Sawyer: Just for the sake of accuracy, I think it makes no difference, but in those days, during the period of this suit, I believe they were trolleys and not buses.

By Mr. Rome:

Q. Well, the trolley car stopped at 19th, did it not?

A. Yes, sir.

Q. And, similarly, at Broad?

A. Yes, sir.

Q. And at 15th, too, and Chestnut Streets as well, which is just a few steps away from the Goldman Theatre?

A. Yes, sir.

Q. Now, the Randolph Theatre is located, is it not, Mr. Wren, on Chestnut Street between 12th and 11th?

A. Yes, sir.

Q. On the south side of the street there?

A. Yes, sir.

Q. And it therefore is just about a block and a half away from the Reading Terminal, isn't that so, the Reading Railroad Station?

A. Approximately, sure.

Q. You have commented earlier during the examination by Mr. Young that there has been a very happy occasion for the -

(2527)

Viking Theatre when you had approximately some four or five hundred people lined up on the street outside the theater?

A. Yes, sir.

Q. You having sold them tickets for the theater?

A. Yes.

Q. Do you recall that?

A. Yes, sir.

Q. Do you recall the kind of weather that it was on that happy occasion for the Viking Theatre?

A. Sometimes cold, sometimes inclement weather.

Q. I mean on that particular occasion when you had the four or five hundred people outside.

A. Well, warm weather with NOT AS A STRANGER, hot weather with NOT AS A STRANGER, cold weather

with ALL THAT HEAVEN ALLOWS, warm weather with FLANNEL SUIT, cold weather with BABY DOLL.

Q. Are you suggesting to us, Mr. Wren, that on all of the instances that you have mentioned you had as many as four to five hundred people?

A. Oh, of course not. I mentioned that we have had 500 people out there.

Q. Well, I was talking about—I thought I had made it clear; forgive me if I hadn't—I was talking about the particular instance that you mentioned to Mr. Young when

(2528)

you had between four to five hundred people standing outside the theater.

A. Right, sir.

Q. And now do you recall the kind of weather that you experienced on that occasion?

A. I think I have indicated that, sir.

Q. I would be obliged if you would indicate it again.

A. Well—

Q. On the particular occasion when you had four to five hundred people.

A. Very hot weather with NOT AS A STRANGER, clear day. I would have to check box office statements on FLANNEL SUIT.

Q. Well, has it been your experience that patrons of theaters are willing to stand in line outside of the theater when it is raining?

A. Of course not.

Q. Or when it is snowing?

A. Well, it depends on how much it is snowing but—

Q. And, therefore, you would agree, would you not, that the accessibility of a theater to people from the means of public transportation which are of importance, as you have agreed with me, is of significance in so far as weather is concerned; would you not agree with that, sir?

A. Certainly.

(2529)

Q. And would you then also agree with me that someone coming downtown on the Broad Street Subway, getting off at Broad and Chestnut Streets, would perhaps be reluctant to walk from Broad and Chestnut to 19th and Chestnut to the Viking Theatre in the rain?

A. Well, no, not if they went over to Market Street. You said that the Frankford El was readily accessible. They could take the subway surface car and get off at 19th and Market and that way they wouldn't have to walk all that distance, sir.

Q. And they would still have to walk the block from 19th and Market down to Chestnut?

A. To the Viking or the Boyd, yes, sir.

(2530)

Q. And they would still have to walk a block from 19th and Market down Chestnut.

A. The Viking or the Boyd, yes, sir.

Q. What time did the Viking Theatre open its doors for the reception of patrons during the period that we have been talking about, Mr. Wren?

A. 8:30 in the morning with NOT AS A STRANGER. I think it was 8:30 in the morning for MAN IN THE GRAY FLANNEL SUIT.

Q. Do you ever open your doors for patrons on any other attractions than those two that you have mentioned at 8:30 in the morning?

A. Oh, yes, but after the period of the suit.

Q. But during the period of the suit?

A. No, sir, not that I recall. I would have to check that. Those two I do know of, sir.

Q. And those two, of course, were advance admission price attractions, were they not?

A. Meaning what, sir?

Q. Didn't you increase your normal admission price for NOT AS A STRANGER?

A. Oh, yes, sir.

Q. Up to $1.80?

A. Yes, sir.

Q. And your more usual admission price is what?

(2531)

A. $1.49.

Q. And you also increased your admission price up to $1.80 for MAN IN THE GRAY FLANNEL SUIT?

A. Yes, sir.

Q. Now, what was the more usual hour when you opened the Viking Theatre during the period that we are talking about, with the exception of NOT AS A STRANGER and MAN IN THE GRAY FLANNEL SUIT?

A. Usually 10:45, sir.

Q. 10:45?

A. Right, sir.

Q. And that would mean that your first show of the day would start at 11:00 o'clock?

A. Right, sir.

Q. And recognizing that there would be some difference in the running time of films during this period, Mr. Wren, when did you normally start your last show of the evening during this period?

A. Depending on the day of the week. Friday night maybe 11:55, Saturday, 11:55; other days, 10:00, 10:15, 10:20.

Q. There has been some reference in earlier discussions this morning about the fact that you recognized that the Stanley Theatres played films that were not distributed by

(2532)

the defendant distributors in this case. Do you recall that? You recall that, do you not?

A. Yes, sir.

Q. And without going into it, you know also that that was the fact with regard to the three Goldman Theatres, do you not?

A. Yes, sir.

Q. Now, inviting your attention to the fact that it has been already been brought out that you kept yourself familiar with what the competing first-run theatres played during the period that we have been talking about here, and, similarly, that you have had made available to you the national film rentals of the pictures that have played during this period—

A. Right, sir.

Q. —I would ask you, sir, whether you would not accept, subject to your checking, and Mr. Sawyer and Mr. Steinberg similarly checking, the fact that during this period we have been discussing there were a total of 22 films that played the Midtown Theatre with national film rentals under one million dollars; would you accept that subject to your check?

A. Yes, sir.

Q. And, similarly, would you not accept with me, sir, the fact that during this period 12 out of the 22 films that thus played the Midtown Theatre had a national film rental under $500,000; would you accept that with me, sir, subject to check?

(2533)

A. Subject to check, yes, sir. Under $500,000, right?

Q. That is right.

A. Thank you, sir.

Q. 22 under one million and 12 of the 22 under $500,000.

And, similarly, would you accept with me the fact that during this period 7 films played the Randolph Theatre with a total national film rental of under $1,000,000, and that 3 out of the 7 had a total national film rental of under $500,000; would you agree with that, sir, and subject to check?

A. All right, sir.

Q. Similarly, would you agree with me that during this period a total of 31 films played the Goldman Theatre with a total national film rental of under $1,000,000?

A. 31 under a million?

Q. 31 under one million.

A. Right, sir.

Q. And 16 of the 31 had a total national film rental of under $500,000; would you accept that, sir?

A. Yes, sir, subject to check.

Q. And that 7—

Mr. Sawyer: Excuse me, Mr. Wren.
Have you said subject to check?
I said: You said, subject to check?

(2534)

Mr. Rome: Yes, sir.

Mr. Sawyer: Would you give me the figure that you gave to the witness with respect to the number of films that played the Randolph Theatre for less than a half a million national film rental?

Mr. Rome: Three.

Mr. Sawyer: I thought you said seven.

Mr. Rome: Excuse me, a total of seven under a million, three of the seven under $500,000.

Mr. Sawyer: That checks.

By Mr. Rome:

Q. And returning to the Goldman Theatre, we were talking about the fact that 7 out of the total of 31 films had a total national film rental of under $400,000. Would you agree to that subject to your check?

A. Sure.

Q. And that 3 out of the 31, 31 being those which had a total national film rental of under a million, 3 of the 31

had a total film rental of under $300,000. Will you accept that, sir?

Mr. Sawyer: I won't.

The Witness: No, sir.

Mr. Sawyer: I do not accept it as a fact.

Mr. Rome: Which figure?

(2535)

Mr. Sawyer: That 3 had a national film rental less than $300,000.

Mr. Rome: At the Goldman Theatre?

Mr. Sawyer: That is right.

Mr. Rome: Forgive me if I am wrong, but let us see if I can check it for a moment.

By Mr. Rome:

Q. Would you agree, Mr. Sawyer and Mr. Rome, too, that MIAMI EXPOSE, which played the Goldman Theatre, had a national film rental of $291,000?

Mr. Sawyer: Yes, sir.

JOE MACBETH.

By Mr. Rome:

Q. (Continuing) JOE MACBETH which played the Goldman Theatre had a total national film rental of $180,000.

Mr. Steinberg: CREEPING UNKNOWN.

Mr. Rome: What did you find that included in the title, Mr. Steinberg?

Mr. Steinberg: I have it playing double feature with the BLACK SHEEP.

Mr. Rome: $229,000 total national film rental?

Mr. Steinberg: No, not on the two.

Mr. Rome: For CREEPING UNKNOWN.

Mr. Sawyer: It played a double feature. Both.

(2536)

We have been taking the exhibition as one. This has been done consistently throughout. That is the value of what you show at one show.

Mr. Rome: I will accept the correction that on that significant motion picture CREEPING UNKNOWN there was a national film rental of $229,000, and it played a double feature at the Goldman Theatre with something called BLACK SLEEP, which had a total national film rental of $437,000.

Are we agreed, sir?

Mr. Sawyer: Yes, a total of $666,000.

By Mr. Rome:

Q. Returning for a moment to the Midtown Theatre, Mr. Wren, I would ask you whether you would accept with me the fact that at the Midtown Theatre out of the 22 films which played having a total national film rental of under a million dollars, there were four that had a total national film rental of under $200,000, three under $300,000, two under $400,000, and three under $500,000.

And Mr. Sawyer can readily check these figures and I will happily correct them if I am wrong.

Mr. Sawyer: Subject to your — you separated double features into two.

By Mr. Rome:

Q. Now, you have in connection with your own play-off of

(2537)

films at the Viking Theatre demonstrated I believe that you had 10 out of your total of 31 films from the defend-

ant distributors which had a total national film rental of under one million dollars; is that the fact, sir?

A. I honestly don't remember.

Mr. Sawyer: 11 according to your way of counting them.

Mr. Rome: 11.

The Witness: Right, sir.

By Mr. Rome:

Q. Roughly one-third, right, sir?

A. Yes, roughly.

Q. And recognizing that the Randolph Theatre played in this period 27 pictures, of which 7 had a total national film rental of under one million dollars, you would agree, would you not, that approximately one-fourth of the films that thus played at thus played at the Randolph Theatre had a total film rental nationally of under a million dollars, as contrasted with approximately one-third at the Viking?

A. That is approximately correct.

Q. Yes. Thank you, sir.

I am turning to the Midtown Theatre, there were, as I have indicated, and we have agreed, 22 films out of a (2538)
total, I believe you will find, of 39 films from the defendant distributors that played the Midtown, 22 having a total national film rental of under a million dollars. So that this was actually better than 50 per cent of the films that played the Midtown having a total national film rental of under a million dollars, better than 50 per cent as contrasted with your approximate one-third.

A. Yes, sir.

Q. And similarly at the Goldman Theatre 31 films having played with a total national film rental of under a million dollars out of a total number of films '68 in number which played the Goldman Theatre during the period, so that again it would be approximately one-half of the films

which played the Goldman which had a total national film rental of under a million dollars. Are we agreed, sir?

A. Yes, sir.

Q. One-half as contrasted with your one-third?

A. Right, sir.

Q. Similarly, these statistics which we have agreed upon together, subject to your checking them, Mr. Wren, would demonstrate the fact that the Goldman Theatre played actually three times as many films with total national film rental under $500,000 as the Viking played films having a total

(2539)

national film rental of under one million dollars; isn't that the fact, sir?

A. May I have that again, sir?

Q. Yes. Permit me to restate it.

A. Please.

Q. You had a total of 10 films at the Viking which played with a total national film rental of under one million dollars.

Mr. Sawyer: 11, sir.

Mr. Rome: 11, sir, excuse me.

By Mr. Rome:

Q. (Continuing) 11, right?

A. Yes, sir.

Q. And the Goldman Theatre had 31 films which played with a total national film rental under one million dollars; correct?

A. Pardon me?

Q. Yes.

A. You say 31 films with a total national. Now, 31 films would certainly total more than a million dollars.

Q. Each one having—

A. Oh, each, I am sorry. Thank you.

Q. Forgive me if I did not make that clear.

A. Right, sir.

(2540)

Q. Are we then agreed?

A. Yes, sir.

Q. Now, you have testified earlier that although you came with Mr. Sley's Viking Theatre officially as of March 1, 1955, you actually had had something to do with the theatre and had had discussions with Mr. Sley earlier?

A. That is right, sir.

Q. Am I correct in believing that you had a discussion with Mr. Sley in December of 1954?

A. I believe that is right, yes, sir.

Q. And sometime during December around the beginning of the year it was in your mind that you might well go with the Viking Theatre; isn't that true?

A. Around the beginning of the year, yes.

Q. Yes, and I would suppose that under those circumstances you became even more interested in following what the Viking was playing and what its competitors were playing at the time. Would that be a fair statement? You merely informed yourself of what was going on in the first-run field?

A. I would say so, yes, sir.

Q. Not in intimate detail, but at least generally?

A. Right, sir.

Q. You knew at the time, for example, that the Viking Theatre at the beginning of the year was playing THE LAST TIME I SAW

(2541)

PARIS?

A. That is right, sir.

Q. And would you be good enough to recall and inform the members of the jury and His Honor who the stars of that film were?

A. Elizabeth Taylor and if I remember correctly Van Johnson.

Q. And it was a film, and we have earlier brought out here, that had a national film rental of $2,665,000; will you accept that, sir?

A. I didn't think it was that high. I know it was over two million.

Q. $2,665,000.

A. That is right, sir.

Q. And therefore, it was a reasonably good picture, certainly far above the average, would you say?

A. Yes, sir.

Q. That was a release by Loew's Incorporated—Metro-Goldwyn-Mayer?

A. Right, sir.

Q. And, as a matter of fact, at that time, did you not learn that the Viking Theatre had thought sufficiently of the picture to offer a guarantee of $40,000?

A. I believe I did, sir, yes, sir.

Q. Now, has your own check in connection with the general

(2542)

preparation of the case, Mr. Wren, not informed you that the LAST TIME I SAW PARIS was responsible for producing for the Viking Theatre the third best gross that any film produced for the Viking Theatre during the period that we have been talking about?

A. Yes, sir.

Q. And that was a total gross of $93,415; is that so?

A. Yes, sir.

Q. And therefore you would regard that as demonstrating the ability of the Viking Theatre as a theatre, would you not?

A. Yes, sir.

Q. Now, since you have indicated to us that up to this time when you informed yourself about what the Viking was doing, and that it was playing THE LAST TIME I SAW PARIS, did you similarly inform yourself of what

was playing at that time in January of 1955 at the Goldman Theatre?

Permit me to help your recollection. Do you recall that a film was playing there called BLACK TUESDAY?

A. I recall the title. It might have been that time, yes, sir.

Q. Again subject to your checking it?

A. Right, sir.

Q. Would you accept that?

A. Yes.

(2543)

Q. Do you recall that film particularly, Mr. Wren, from your own experience in the industry? Have you any particular recognition of that as an outstanding film in any way?

A. I honestly don't, sir, no, sir.

Q. It was a United Artists release, would you accept that, sir?

A. Yes, sir.

Q. And it was actually a film that starred Edward G. Robinson.

Now, it had a total national film rental of $579,000. Would you accept that?

A. Subject to checking.

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(2544)

Q. Actually the Viking Theatre played THE LAST TIME I SAW PARIS for a total of nine weeks, isn't that so?

A. Yes, sir.

Q. And the Goldman Theatre only played BLACK TUESDAY for two weeks?

A. Right, sir.

Q. Running from January 18 through until February 1 of 1955, right, sir?

A. Right, sir.

Q. And that actually would have been during your sixth and seventh weeks of showing THE LAST TIME I SAW PARIS at the Viking Theatre. Are we correct?

A. Yes, sir.

Q. Now, what from your record that I believe you have there, Mr. Wren, did the Viking Theatre gross. In other words, what was the total boxoffice receipts for the sixth week, January 18 to 25?

A. $9,023, sir.

Q. $9,023 for the sixth week, and for the seventh week THE

(2545)

LAST TIME I SAW PARIS?

A. $8,817, sir.

Q. And what gross receipts did you have for admissions of the very first week of THE LAST TIME I SAW PARIS, this $2,665,000 total national film rental picture?

A. Well, the picture, as you know, opened on December 14.

Q. Yes, sir.

A. Pre-Christmas and did $17,432.

Q. $17,432.

And the significance of your comment, so that we are clear with each other, is that you want the jury and the Court to be informed that pre-Christmas week is not considered the best week of playing during the year, right?

A. That is right, sir.

Q. And a picture entering at some other time, that same film conceivably opening at another time might have grossed more, right?

A. Sure, Christmas Day, Christmas Week.

Q. Yes. Christmas Day would be better than the 14th, in your judgment?

A. Yes.

Q. Right?

A. Yes, sir.

Q. Would you accept with me the fact that, subject to

(2546)

checking, BLACK TUESDAY playing in the Goldman Theatre, opening on January 18, 1955, which is not a particularly outstanding period for the playing of a motion picture, actually had total boxoffice receipts for this first week of $25,425. Would you accept that? Do you shake your head, yes, sir?

A. No. I know it was a good gross.

Q. Yes. And the gross of BLACK TUESDAY at the Goldman Theatre was therefore eight thousand odd dollars more than your total gross on the first week of LAST TIME I SAW PARIS at the Viking; are we correct?

A. Yes, sir.

Q. And would you say that January 18, 1955, was any better time to open a film than December 14, 1954?

A. Oh, I think you will consider this, Mr. Rome. People are shopping pre-Christmas. You have to concede that.

Q. Had you increased your admission price at the Viking for THE LAST TIME I SAW PARIS, do you know?

A. I don't believe so. I think it was $1.30, $1.35.

Q. $1.35.

Now, would you accept with me, subject to check, that the second week at the Goldman Theatre on BLACK TUESDAY, January 26 to February 1, produced a total boxoffice receipts of $11,587?

A. Yes, sir.

(2547)

Q. And that contrasted with your seventh week, the same period of time of LAST TIME I SAW PARIS, of $8,817.

A. Yes, sir.

* * *

Q. In your second week, which Mr. Sawyer wants me to bring out, THE LAST TIME I SAW PARIS, this film had a total national film rental of $2,665,000, produced what at the Viking Theatre?

A. $11,296. Still pre-Christmas the majority of the week, sir.

(2548)

Q. Still pre-Christmas. Well, what was the period of your second week, what was the actual playing time? It ran from the 21st—

A. 14th to 20th, roughly, and from the 20th to 26th.

Q. Am I not correct that you had a midnight show on the night of the 20th and 21st?

A. I am not certain of that.

Q. What I am getting at, your second week, actually, included Christmas, did it not?

A. I said, 20th to 26th; yes, sir.

Q. This was the important playing time that you have earlier commented about?

A. I said that the bulk of this week was pre-Christmas.

Q. Yes, but nevertheless this second week produced in the Viking Theatre $11,296, THE LAST TIME I SAW PARIS, and you have accepted with me, subject to your check, that the second week of BLACK TUESDAY at the Goldman Theatre, a film which had a total national film rental of $579,000 produced $11,587. In other words, the second week of BLACK TUESDAY outgrossed your second week on THE LAST TIME I SAW PARIS. Is that correct?

A. Yes, sir.

Q. Now, actually, the Goldman Theatre gross of $25,425 was a better gross than any week at the Viking Theatre

(2549)

during the period in suit, with the exception of two. Isn't that a fact?

A. You are figuring BABY DOLL, sir?

Q. No, I am talking about the pictures that played up to November 13, 1956.

A. That played up to?

Q. That is right, sir.

A. There were two pictures before that: NOT AS A STRANGER and—

Q. MAN IN THE GRAY FLANNEL SUIT? Is that right?

A. Yes, sir.

Q. So that out of all of the weeks in which films played the Viking Theatre during the period in suit there were only two in which the Viking Theatre produced a gross larger than $25,425. One was your first week on NOT AS A STRANGER, and the second, the other week, was your first week on MAN IN THE GRAY FLANNEL SUIT. Is that right?

A. Yes, sir.

Q. Now, it has already been agreed between us that both of those films played at an advanced admission price, $1.80. Isn't that so?

A. Yes, sir.

Q. Now, you know, do you not, that the film BLACK TUESDAY, playing in the Goldman Theatre did not play at an advanced

(2550)

admission price; actually, it was playing at an admission price of $1.35. Don't you know that to be true?

A. No, I don't know, but I will accept it.

Q. Your first week of NOT AS A STRANGER produced the biggest week's business of the Viking Theatre during the period that we had been talking about. Is that right?

A. Yes, sir.

Q. A total of $34,000. Now, can you tell me, Mr. Wren, how much of that $34,000, by how much, the $34,000

would be reduced if you had played NOT AS A STRANGER at your ordinary admission price of $1.49 rather than $1.80. Would you say it would run perhaps around $3,000?

A. Possibly.

Q. So that if you were to make the adjustment for the fact that you were playing at the advanced admission price NOT AS A STRANGER, the first week then would be around $31,000. Is that right?

A. Yes, sir.

Q. As contrasted with the Goldman Theatre's first week of BLACK TUESDAY of $25,400.

A. Correct, sir.

Q. Your first week on NOT AS A STRANGER included July 4, didn't it?

A. Yes, sir.

(2551)

Q. And that is, certainly you would agree, infinitely better playing time for a film than January 18.

A. Yes, sir.

Q. And even taking that into account you would agree that the Goldman Theatre on a film which had merely $579,000 total, national film rental, came within a few thousand dollars of matching your gross receipts on the first week of NOT AS A STRANGER, playing over a fourth of July?

A. Yes, sir.

Q. Actually, the $25,000 gross of the Goldman Theatre on this same film was better than your opening gross on the film STUDENT PRINCE which had a total national film rental of $2-½ million. Isn't that so?

A. Yes, sir.

Q. And that, too, played on a 4th of July week. Is that right?

A. Yes, sir.

Q. And it was better than your opening week on the film BETRAYED which had a total national film rental of $1,900,000. Right?

A. That is correct.

Q. And BETRAYED, that first week of BETRAYED, included Labor Day, didn't it?

A. Yes, sir.

(2552)

Q. Which is certainly better playing time than January 18. Right?

A. Yes, sir.

Q. And it was better, the Goldman's gross on this film BLACK TUESDAY, was better than the gross that you earned on the film ATHENA which had a total national film rental of $1,229,000. Right?

A. Yes, sir.

Q. And your first week of ATHENA included Thanksgiving, didn't it?

A. Yes, sir.

Q. And Thanksgiving is a lot better playing time, isn't it, than January 18?

A. Yes, sir.

Q. And the Goldman's gross on BLACK TUESDAY was better than your gross on the first week of GLASS SLIPPER which had a total national film rental of $1,381,000. Isn't that so?

A. Yes, sir.

Q. And your first week of GLASS SLIPPER included Easter, didn't it?

A. No, it did not.

Q. It did not include Easter?

A. No, sir; it did not, HIT THE DECK played through Easter.

(2553)

Q. Sir?

A. HIT THE DECK played through Easter.

Q. Do you recall what the date of Easter was that year?

A. It was before the 13th, sir. HIT THE DECK played Easter.

Q. Can you, by looking at your record, indicate what week it was that year, that included Easter, when HIT THE DECK played?

A. The week ending the 13th of April included Easter. I am almost certain.

Q. The 13th was Easter?

A. The week ending the 13th. It is somewhere in there. I am not sure of the exact date. HIT THE DECK played Easter, sir.

Q. All right. We will chick it out. The Goldman gross on BLACK TUESDAY of $25,000 was better than the gross that you earned at the Viking Theatre on the film, THE PRODIGAL, which had a total national film rental—

A. Pardon me? Better than the gross we earned at the Viking Theatre?

Q. The first week.

A. You didn't say that, sir. You said better than the gross we earned on THE PRODIGAL.

Q. I certainly don't want to have any misunderstanding.

(2554)

Thank you for correcting me, Mr. Wren.

But indisputably, it was a better gross for the first week at the Goldman Theatre on BLACK TUESDAY than your first week on THE PRODIGAL. Isn't that so?

A. Yes, sir.

Q. And THE PRODIGAL had a total national film rental of $2,181,000. Isn't that so?

A. I will accept that.

Q. As contrasted with the $579,000 of BLACK TUESDAY. Now, your first week playing THE PRODIGAL—excuse me—not your first week of THE PRODIGAL, but your exhibition of THE PRODIGAL included Memorial Day. Isn't that so?

A. I believe you are right. It did.

Q. It did?

A. Yes, sir.

Q. And that was during the third week of the engagement. Isn't that so? Memorial Day that year came during the third week that you were playing THE PRODIGAL.

A. Just a moment.

Q. Excuse me.

A. Yes, sir.

Q. Of course, that would be much better playing time than the week of January 18. Isn't that so?

A. The last week of the picture? Yes, sir. I will concede

(2555)

that.

Q. Memorial Day.

A. Yes, sir.

Q. Now, do you recall testifying on several occasions earlier about the film, A KISS BEFORE DYING?

A. Yes, sir.

Q. And that was a picture about which you said that you could tell ahead of time that it was really not going to do very much business at the box office and that you regarded it essentially as a slough picture.

A. That's right, sir.

Q. And it actually only produced a total national film rental of $574,000. Would you accept that, subject to your check?

A. Yes, sir.

Q. And that is the reason why you regarded it as a slough picture. You normally would not be interested in it, would you?

A. That is right, sir.

Q. Would you agree with me that you would not normally have been interested in BLACK TUESDAY?

A. Not normally; no, sir.

Q. But having seen now how it grossed at the Goldman Theatre would you have been interested in it?

(2556)

A. I doubt it, sir.

Q. You doubt it. Good.

Now, A KISS BEFORE DYING played at the Viking Theatre from July 11 to July 27, 1956. Isn't that right.

A. Yes, sir.

Q. And you would agree with me that as a general matter summer exhibition time is more desirable, it is generally the kind of time that will produce better business at the box office than the dead of winter, January 18?

A. Yes, sir.

(2557)

Q. Now, from your records, Mr. Wren, what did your first week at the Viking Theatre on A KISS BEFORE DYING produce by way of total admissions, total receipts?

A. $5171 the first week.

Q. As contrasted with the $25,425 first week on BLACK TUESDAY?

A. Yes.

Q. Which had merely $5000 more total national film rental than A KISS BEFORE DYING?

A. Yes, sir.

Q. So that we have a contrast of $5171 in the Viking against $25,000 in the Goldman and you have agreed with me that the Goldman's film, BLACK TUESDAY, was playing at a less desirable time of the year; isn't that so?

A. Yes, sir.

Q. Now, what did your second week on A KISS BEFORE DYING produce by way of total admissions and receipts?

A. $3,499.

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(2560)

Q. Mr. Wren, would you agree that generally speaking an exhibitor is desirous of playing a film in his theatre for a period of longer than one week?

A. Yes.

Q. And, normally speaking, a film that is capable of being played for longer than one week is a film that is doing better at the box office; isn't that so?

A. Not necessarily.

Q. Not necessarily, but isn't it generally true that if a picture has mass appeal, it will be played in a theatre for longer than one week?

A. Naturally, sir, but also depending on how the exhibitor is committed.

Q. Would you care to explain what you mean by that?

(2561)

A. Well, if the picture opens poorly and you are committed for four weeks, it must continue.

Q. Oh, yes. Apart from contractual commitments?

A. Yes, sir.

Q. Thank you for clarifying that.

Apart from contractual commitments, in other words, if the exhibitor has entered into a contract with the distributor to play the film for a particular number of weeks, he is required under the contract to do so?

A. The exhibitor with the distributor?

Q. Yes.

A. Yes, sir.

Q. But apart from that, normally speaking, where there is no contractually obligated playing time, the exhibitor plays a picture for a longer period if it has mass appeal and the people are patronizing the theatre to see the picture?

A. Yes, sir.

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(2562)

Q. Indicative of the kind of thing that I think both you and I have in mind is the fact that as you talked about it with Mr. Young, you didn't play THE LAST WAGON for more than one

(2563)

week because you didn't feel that it was holding up particularly well at the boxoffice; isn't that so?

A. That's right.

Q. It didn't have the kind of continuous appeal to the public that would warrant your holding it as you viewed it for more than one week?

A. No, with the terms.

Q. That's right.

A. Right, sir.

Q. And this would be equally true by way of another illustration of your view of the film TEENAGE REBEL which played only one week in the Viking Theatre; isn't that true?

A. Yes, sir.

Q. Now, during the period involved in this suit, is it not the fact that the Viking played a total of six films for one week each only?

A. Including the reissue WIZARD OF OZ?

Q. Including the WIZARD OF OZ.

A. Yes, sir.

Q. The reissue?

A. Yes, sir.

Q. And you would say, would you not, that this was because in each one of those cases you felt that the particular film did not have enough appeal to the public to warrant your con-

(2563a)

tinuing it longer and you were not obligated under your contract to continue playing it longer?

A. Right, sir.

(2564)

Q. And this despite the fact that a film such as TEENAGE REBEL ultimately earned a total national film rental as high as $1,324,000?

A. Yes.

Q. Now, will you agree with me from your knowledge of what played at your competitors' first-run theaters in Philadelphia, and subject to your checking, that during the period involved, that we have been talking about, the Goldman Theatre played 42 motion pictures for a period of one week each only; would you accept that subject to your checking?

A. Subject to checking, yes, sir.

Q. And would you accept further the fact that in addition to the 42 films that thus played for one week or less there were another ten pictures that played for eight or nine days; would you accept that subject to your checking?

A. That is during the period of the suit?

Q. During the period, yes, sir.

A. Yes, sir.

Q. So that in essence then, to put it another way, the Goldman Theatre had a total of 52 weeks of playing time during the period that we are talking about in which it exhibited films for one week or eight or nine days as contrasted with the fact that during the same period of time the Viking only had six films that were exhibited for one

(2565)

week only; would you accept that subject to your check?

A. Yes.

Q. Will you similarly accept the fact that during this period of time, when the Viking Theatre had only six pictures that played for one weeks, the Midtown Theatre had fifteen films that played for one week only?

A. Subject to check, yes.

Q. Thank you, sir.

And in addition to that, at the Midtown Theatre, in in addition to the fifteen, there were another four films that played for eight or nine days only; would you accept that subject to your checking?

A. Yes.

Q. And then, to put it another way, during this period of time, when the Viking Theatre had six pictures which played for one week only, and thereby, as you have stated and I have agreed, indicating films that did not have a considerable public appeal, the Midtown had nineteen such instances; would you accept that?

A. Subject to check, yes.

Q. Thank you.

We have been talking, not only you and I, but other counsel and yourself, during the course of the trial thus far about total average national film rental. You are

(2566)

familiar, of course, are you not, sir, with the total average national film rental of each one of the pictures that played at the Viking Theatre?

A. I don't understand the "average," sir.

Q. Excuse me. The total national film rental earned by the particular theater.

A. Right, sir.

Q. Forgive me if I used the word "average."

A. Right, sir.

Q. You are familiar with those figures for the films that played at the Viking Theatre during the period in suit?

A. Yes, sir.

Q. And you would agree with me, would you not, Mr. Wren, that during the period involved in the suit the Viking played a total of 30 programs, which included 31

films, there being one double feature of ABDULLAH'S HAREM and THE QUEEN OF BABYLON?

A. Right, sir.

Q. Now again I ask you whether you would be kind enough to accept with me, subject to your verifying it by your own check, the fact that if we were to take the total national film rental earned by each one of the 31 films that played in the Viking Theatre, and then struck an

(2567)

average of those 31 films, that that average would be $1,515,000; would you be kind enough to accept that with me, subject to check?

A. Subject to check. $1,515,000?

Q. Yes. These are the films, so that we are clear together, that played first run, and were not reissues, and incidentally are those films which were distributed by the defendant distributors.

A. You are speaking of the Viking?

Q. Yes.

A. And on the 31 shows you do have one reissue, WIZARD OF OZ.

Q. That is right. I am drawing your attention specifically to that.

A. Right, sir.

Q. And there would be, I suggest to you, subject to your verification, an average of $1,515,000 excluding the reissue.

A. That is right.

Q. Excluding the reissue.

A. So that is 30 shows.

Q. That is right, sir.

A. Yes.

Q. Now, I suggest to you, and ask if you would be good enough to accept with me, subject again, of course, to your

(2568)

verification, that during the same period of time, using the same approach and criteria, that the average national film rental—

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Q. (continuing) The average national film rental of the pictures that played at the Midtown Theatre during this same period of time was $1,244,000; will you accept that with me, subject to check?

A. Subject to check, yes, sir.

Q. And to come to the point that Mr. Sawyer kindly mentioned, I would suggest to you, so that you may have it for your own check, that during this period the Midtown played 39 films first run, that would come within this category that we have agreed we would talk about, and hence, using those statistics then, the Viking had films that it displayed first run that had 22 per cent higher average national film rental than did the Midtown Theatre.

If you find that my statistics are correct would you then agree with me that the Viking played films that had an average national film rental that was 22 per cent higher than the films that played at the Midtown

(2569)

Theatre?

A. Subject to check.

Q. Thank you, sir.

And, similarly, applying the same approach now to the Goldman Theatre, which for your information and use, so that you may check it accurately, the Goldman Theatre which during the period we are talking about played 68 films as contrasted with the 30 that the Viking had which we have talked about, the average national film rental of the 68 films that played at the Goldman Theatre, unlike the $1,515,000 at the Viking, was $1,260,000. Will you accept that?

A. Is this 68 separate shows or 68 including combination shows?

Q. This would be including the combination shows, sir.

A. 68 programs?

Q. 68, and I suggest to you, sir, that that statistic would then show that the Viking contrasted with the Goldman played films that had 20 per cent better national film rental than did the Goldman.

A. Subject to check, yes, sir.

Q. Thank you, sir.

A. Yes.

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(2570)

Q. Mr. Wolf used this formulation or chart to indicate that the Viking sought to license during the period from the time you joined the Viking Theatre up to the close of the period November 13, 1956, a total of 75 films from the defendant distributors.

Mr. Sawyer: That is correct. I do not think that is the number they sought to license. It is the number they bid for or made offers for.

Mr. Rome: I will accept the correction. The Viking bid or made offers upon 75 films.

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(2571)

Q. (continuing) And this, of course, represents the column showing the distributors, this represents the number that you bid or offered for at the Viking, the number that you actually licensed.

And now, with your permission, we will put in here the Goldman, the Midtown and the Randolph.

Again, subject to your own check about it, I will ask you whether it isn't the fact that in so far as Loew's pictures are concerned you have bid or offered for a total of thirteen, and having licensed four, the Goldman Theatre actually licensed none out of the thirteen, the Midtown licensed none, and the Randolph licensed two. Will you check me as I go along, sir, and Mr. Sawyer.

Mr. Sawyer: How can I check you? You go ahead and put it on there. He has no more idea of that than flying.

By Mr. Rome:

Q. (continuing) If you have any desire, Mr. Wren, to have me state the names of the pictures for you, I would be glad to do so.

A. I don't understand one thing.

Q. Yes.

A. Bid? That the Goldman bid at the Goldman, bid at the

(2572)

Midtown, bid at the Randolph?

Q. No, sir, I am not suggesting either to be the case, I am merely suggesting or listing here the number of pictures from Metro out of the thirteen that the Randolph actually licensed and played. Are we clear, sir?

A. Yes.

Q. Thank you.

And that in so far as United Artists films are concerned the Goldman had none, the Midtown had none, and again the Randolph had two.

As to Warner Brothers the Goldman had three, the Midtown none, and the Randolph one.

As to Columbia, again the Goldman had none, the Midtown had none, and the Randolph had one.

As to Paramount, the Goldman had one, the Midtown had four, the Randolph had none.

As to Universal, out of the four that you bid or negotiated for, the Goldman Theatres had none of them.

As to RKO, the Goldman had none, the Midtown had one, and the Randolph had none.

As to Fox, again, out of the sixteen that you bid or offered for, you got eight and the Goldman got none, the Midtown got none, and the Randolph got none.

(2573)

So that by way of total, whereas you were able and did license 29 out of 75, the Goldman Theatre licensed a total of four, the Midtown Theatre licensed a total of five, and the Randolph licensed a total of six, or a total of fifteen in all, whereas you licensed 29.

Will you agree to accept that subject to your further checking and verification?

A. The one that concerns me is Universal.

You have one picture AWAY ALL BOATS that was discussed at the time we negotiated for the Universal pictures.

Q. Did you submit a bid on it?

A. I beg your pardon?

Q. Did you submit a bid on it?

A. No, sir.

Q. Did you submit an offer for it?

A. We were negotiating for the picture.

Q. Did you submit for it?

A. We were told it would be on the same basis as the other four with no guarantee.

Q. Did you submit an offer for it, Mr. Wren?

A. You mean a written offer?

Q. Verbal or written.

A. Well, it was verbally promised to us.

(2574)

Q. My question, sir, is whether you submitted an offer for that picture, or do you agree with me that you didn't.

A. There was no need to when I was told it was ours.

Q. Very well, then.

Even if you were to add that one, instead of 29 versus 15, it would be 29 versus 16.

A. Yes, sir, subject to check. There is one that comes to mind.

Q. Subject to check?

A. Yes.

Q. Actually, this would mean, as Mr. Goffman kindly advises me, that instead of there being six here there would be seven (indicating). So that instead of 29 it would be a total of 30. Isn't that true?

Mr. Sawyer: He did not get it.

The Witness: No, I didn't get it.

Mr. Rome: Very well.

By Mr. Rome:

Q. You never submitted or sent to William Goldman Theatres, Inc., any letter complaining about its actions in any way, did you?

A. I don't think so; no, sir.

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(2576)

By Mr. Ward:

Q. You testified this morning in response to a question put to you by Mr. Young that the most important consideration from the standpoint of an exhibitor in first run Philadelphia was box office receipts; is that correct? Isn't that what you testified to this morning?

A. I think I said it was one of the most important things, sir, didn't I?

I would like to see what I said, sir.

Q. You don't remember what you said this morning in response to a question that was put to you about three hours ago?

A. I don't remember whether I said it was one of or the

(2577)

most important, sir.

Q. You don't remember, sir?

A. I don't remember whether it was one of or the most important.

The Court: Which is it?

The Witness: I don't remember, sir.

The Court: No, I am asking you.

The Witness: I don't remember. I don't know how I used it.

The Court: I am asking you now, say for the first time: Is the box office receipts the most important thing in connection with the operation of your theater, the Viking?

The Witness: That is one of the most important, because the next would be terms. Terms first and then box office receipts I would say, in that order.

The Court: Well, you may be right, I do not know.

The Witness: To indicate a point, sir, if you grossed $100,000 and you had a film rental of $101,000, terms, the box office receipts wouldn't be important, yet they would be impressive.

The Court: Well, proceed, Mr. Ward.

By Mr. Ward:

Q. Your ultimate objective as an exhibitor is to generate

(2578)

as much cash from box office receipts as is possible, is it not?

A. Yes, sir

Q. And what consideration operating in the mind of an exhibitor with respect to the conduct of his business is more important than how much money he can generate at his box office, any?

A. I guess that would be right, sir.

Q. Box office receipts is the paramount consideration, right?

And I do not use that in the sense of a pun.

A. I think it has to be coupled with terms. You naturally want people at a price you can afford.

Q. So you want to qualify what you just said then, when you acknowledged that it was the most important consideration; is that correct?

A. That is right, sir.

Q. Now, you will also concede, will you not, that from the standpoint of the exhibitors of motion pictures the amount of cash that can be earned by the exhibition of those motion pictures is the main consideration from their standpoint as businessmen?

A. I would assume, yes.

Q. And you know that as an active man in the motion picture business, without assuming it, isn't that so, sir?

(2579)

A. Yes, so I am told, that is what they are interested in.

Q. You will also acknowledge, will you not, that the financial results achieved by first-run exhibition of a motion picture is the true measure of the degree of success of that picture?

A. Do you mean the return to the distributor from the engagement?

Q. Nationally.

A. Nationally?

Q. Yes.

A. Yes, sir.

Q. You will also concede, will you not, that the first-run exhibition of a motion picture film in a metropolitan area such as Philadelphia generates the bulk of the revenue from motion picture exhibition?

A. The Philadelphia exchange area, first run?

Q. Yes.

A. Yes, sir.

Q. And that generally is true in the industry in all metropolitan centers all over the country, is it not; it is a well-recognized fact, in short, is it not, sir, that first-run exhibition and the cash which such exhibition generates

is the bulk of the revenue received by the distributors; you recognize that?

(2580)

A. I would say so, yes, sir.

Q. And you will also acknowledge, will you not, that the revenue that is generated by first-run downtown exhibition is essential to the survival of the motion picture industry?

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The Witness: Well, I was just wondering what would happen if all the first runs were wiped out. They would still have revenue.

By Mr. Ward:

Q. I didn't ask you whether they would still have revenue, if you will think back to the question I put to you.

Will you think about my question again and give me the answer.

A. Yes, sir.

(2581)

Q. You will also concede, will you not, that a first-run feature motion picture is never exhibited in two first-run theatres in the same area at the same time?

A. Philadelphia?

Q. Yes.

A. Yes, sir.

Q. You recognize that to exhibit the same motion picture feature in two first-run theatres in the same first-run area would be an uneconomic thing to do, don't you?

A. Yes, sir.

Q. You also recognize, do you not, that it is a common practice in the motion picture industry with respect to first-run Philadelphia exhibition for first-run exhibitors, theatre owners, to compete for the same picture—that is a common practice in the industry?

A. Yes, sir.

Q. And you will also acknowledge, will you not, that any picture that may be won by a first-run exhibitor cannot be awarded to any other first-run exhibitor in the same first-run area?

A. Yes, sir.

Q. And, therefore, you recognize, of course, that with respect to the award of a license for a particular film to one of several exhibitors who have sought it, there is bound

(2582)

to be one or more disappointed exhibitors in every such situation; is that correct, sir?

A. Yes, sir.

Q. You also acknowledge, do you not, that the Viking Theatre Corporation, of which you are now the vice president, can take or leave the motion pictures produced by any of the distributor-defendants in this case; right?

A. I don't understand what you mean by "take and leave." You mean we can bid for them or not bid for them; we can make—negotiate for them or not negotiate for them?

Q. That is right.

A. Yes, sir.

Q. To state it differently, there is no obligation upon the part of your corporation to seek films if you don't want them; right?

A. That is right, sir.

* * *

(2584)

Q. All things being equal, Mr. Wren, if you go to the

(2585)

exchange office of any one of these distributor companies and you learn that they are going to exhibit a film next month, you don't say to this jury that you take the position here that you have the legal right to that film, do you?

A. No, sir.

Q. Under the terms of your contract of employment with the Viking Theatre Corporation, you became general manager of the theatre on March 1, 1955; is that correct?

A. Yes, sir.

Q. How long before that did you reach an oral understanding with Mr. Harry Sley which led you to the conclusion that you had a firm agreement with respect to your employment, as such, by the Viking?

A. Late December or early January.

Q. Were there any writings exchanged at that time between you and him or any correspondence exchanged by you and Mr. Sley with respect to your employment or its terms at that time?

A. No, sir; no, sir.

Q. Was the first time that there were any memoranda or writings dealing with your employment by the Viking Theatre the contract of employment dated March 1st, 1955?

A. No. I think it was dated January the 19th, 1955.

Q. You are quite correct about that. Was it signed on

(2586)

that date?

A. I am not sure, Mr. Ward. It may have been. It may have been a couple of—

Q. Do you have any recollection when it was signed with relation to its date?

A. Honestly, I don't—I don't know whether it was signed that day or not.

Q. Well, at any rate, I will come back to the employment agreement in a moment.

You have told us, therefore, that when you had these talks with Mr. Sley you reached a firm understanding with him, as I recall your answer, sometime in late December or the early part of January, 1955?

A. Yes, sir.

Q. December of 1954 or January, 1955?

A. Right, sir.

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(2595)

Q. The question, Mr. Wren, is whether you can tell us, if you know, the year in which there was peak attendance at motion picture theatres throughout America.

A. I would say about 1946.

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(2597)

Q. Now, without my asking questions, can you continue and give in succession the years in which the attendance either rose or declined?

(2598)

Let me put it to you this way, Mr. Wren: I think we can save time.

I have before me here in my hand a record of the box office figures and the attendance figures compiled by the United States Department of Commerce, and it shows, just as you have testified, that the peak attendance in motion picture admissions was in 1946 when 79,400,000 people attended motion picture theatres weekly. Now, you have correctly stated that that was the peak year in the last 25 years. Do you know if the trend is indicated by the fact that in 1947, the next year, is dropped to 71,000,000? Do you know that?

A. I would just assume it would, sir.

Q. Well, accepting these official figures of the United States Department of Commerce, which may be checked—and if this lights a recognition on your part of these figures based upon your observation as manager, please interrupt and say so—isn't it a fact that in 1948 the attendance dropped to 66 million eight per week?

A. I will accept your figures, sir.

Q. And in 1949, 62 million four?

A. If that is what you have there.

Q. And in 1950, 59 million three?

A. Yes, sir.

(2599)

Q. 1951, 55 million six; 1952, 52 million three; 1953—

Mr. Sawyer: 1952.

Mr. Ward: I should have read 1952, 52 million three. If I misspoke, I am happy to correct it.

By Mr. Ward:

Q. 1953, 47 million four; 1954, the year when you firmed up your understanding late in the year with Mr. Sley, 46 million one; 1955, the year in which your contract was signed, 44 million one; 1956, 43 million three and 1957, 37 million seven. You recognize that those figures demonstrate, do you not, a constantly uninterrupted decline and decrease in the average weekly attendance at motion pictures throughout the country, do you not?

A. Yes, sir. That is what they indicate.

Q. Now, you also recognize, do you not, Mr. Wren, that in the late forties television had an enormous impact on the motion picture exhibition industry as well as distribution, the entire motion picture industry?

A. Oh, yes.

Q. You recognize that, don't you?

A. Yes, sir.

Q. And it is a fact, without going over a lot of statistics, that television caught on and became a matter of national interest in about 1946 or 1947; isn't that so?

(2600)

A. Well, I say it had to be a little later to be really—

Q. You fix it.

A. —give us real problems.

Q. Well, you fix it.

A. Well, I am just assuming that after the war it took time for production—maybe '48, '49, yes, sir.

Q. Well, 1946 and 1947 were after the war, too.

A. Well, I understand, sir,—

Q. All right, 1948 or 1949?

A. —but I don't believe they were geared for mass production.

Q. And as time went on the number of television receivers throughout America increased by leaps and bounds, didn't they?

A. I would assume so; yes, sir.

Q. And the advent of television and its popularity and its public reception and acceptance was one of the most critical problems with which the motion picture industry was faced in its entire history; isn't that so?

A. One of the big factors; yes, sir.

Q. And it had an enormous impact not only on attendance, as we have just seen, but also on motion picture theatre admissions and the gross receipts, didn't it?

A. Yes, sir.

(2601)

Q. And as the result of the impact of television, isn't it a fact from your own observation, as a member of the motion picture fraternity, that fewer pictures were filmed by the distributors following the beginning of the popularity of television, fewer pictures?

A. I would say so; yes, sir.

* * *

(2602)

Q. I should like to ask this question to clarify the result of your answers to questions put to you by other counsel with respect to the licensing of the 75 pictures for which you bid or made offers. There were 75 of those pictures for which you bid or made offers altogether, isn't that right, Mr. Wren, according to the charts that we have had on the board?

A. Yes, sir.

Q. This morning Mr. Wolf by means of the outline that he made upon the board showed that 17 of those pictures went to the theatres operated by the Stanley Company; do you recall that figure of 75 pictures?

A. I believe that is correct, Mr. Ward.

Q. And according to the board, which still has the chalk writing on it, which is now before us, that 15 of those pictures, as Mr. Rome has demonstrated in his examination, went to theatres operated by the William Goldman Theatres, correct?

A. Yes, sir.

Q. And the board also shows, based again on Mr. Wolf's examination of you, that the Viking got 29, correct?

A. Yes, sir.

Q. Now, my only point now, and this is the question which I put to you, that makes a total of 61, adding the 17, the 15, and the 29 makes a total of 61 pictures, of the 75, leaving 14, correct?

(2603)

A. Yes, sir.

Q. Now, those 14 pictures went to the Trans-Lux, the Arcadia, and the Fox Theatre, right?

A. I would assume, yes, sir.

Q. And none of these three theaters—the Trans-Lux, the Arcadia or the Fox—is in any way associated or affiliated with the Stanley Company or with the William Goldman Theatres; that is right, isn't it?

A. Yes, sir.

Q. At or about the time when you first became employed by the Viking Theatre it was your thought, was it not that the best thing for the Viking was to go after what we have called blockbusters, films characterized as blockbusters, high-grossing pictures, is that correct, sir?

A. Yes, sir.

Q. During the course of your direct examination, and in your response to some of the questions put to you on cross-examination, you have made reference to cash guarantees, sometimes called "front money."

My question to you in that area is this: Is it not a fact that a guarantee in connection with an offer to license a film is only a part of the entire picture in connection

with the bid or the offer that is to be considered and evaluated by a distributor?

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(2604)

Q. (Continuing) Is that correct?

A. So I am told, it is only a part, yes, sir.

Q. And you are not only told that, Mr. Wren, but you recognize it as a fact of life in the motion picture industry, that a guarantee is only a part of the whole picture, isn't that so?

A. Yes, sir.

Q. And, as a matter of fact, without going again into the detail, there were occasions in the course of your efforts to obtain motion pictures where you did not offer guarantees. That is a fair statement, isn't it?

A. Yes, sir.

Q. And is it not also fair to state that you exhibited many pictures that the Viking won where you had not offered a guarantee?

A. Yes, sir.

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(2607)

Q. This is the contract that was prepared for you by an attorney to whom you were referred by Mr. Formato, the branch manager or local representative of Loew's, isn't that so?

A. I have said that, yes, sir.

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(2630)

Q. And you have thoroughly prepared yourself to testify in this case on behalf of the Viking Theatre, have you not?

A. Yes, sir.

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(2633)

Q. I show you these two papers, Mr. Wren, on pink paper marked UAD-75 and ask you whether these are the

documents by the terms of which you submitted a bid application for the film, for the United Artists film NOT AS A STRANGER?

A. Yes, sir.

Q. Now, if you will just hold that in your hand while I hold a photostatic copy of the same document in mine, there are certain matters with respect to it that I should like to ask you certain questions about. First, on the first page of that exhibit, UA-75 your signature appears at the lower left-hand corner as having signed it on behalf of Viking Theatre Corporation; correct?

A. Yes, sir.

Q. And your signature likewise appears on behalf of Viking Theatre Corporation on the lower left-hand corner of page No. 2 which is designated as the operating expense rider; is that right?

A. Yes, sir.

Q. Now, referring to the first page of this same exhibit, I direct your attention to paragraph 2 at the top and ask

(2634)

you if the language doesn't read as follows:

"2. Insert all terms of your bid and supply all information requested. No bid will be considered unless the schedule and bid are completely filled out."

That is a correct reading, is it not?

A. Yes, sir.

Q. The last sentence is in bold face type; is that right?

A. Yes, sir.

Q. I now direct your attention to paragraph 3 of the same document, 3(b), and I am going to read this language from it and ask you to confirm the fact that I have read it correctly.

"If an agreement as to the operating expense of your theatre can be reached, we are willing to guarantee to you a profit equal to 10 per cent of the gross receipts for each week or portion of a week where the engagement is in excess of a week. Each week or a portion of a week shall be

computed separately and apart from any other week or portion thereof. If you wish to make a bid on the basis of this 10 per cent profit guarantee, an operating expense rider is attached hereto for your convenience. All information is requested to assist in appraising the rider."

That is correctly read, is it?

(2635)

A. Yes, sir.

Q. Did you read this language before you signed it, Mr. Wren?

A. No, because I feel that it applies to a 70-30-10 deal and not a 90-10 deal, sir.

Q. It doesn't say so in here, does it?

A. Pardon me?

Q. It doesn't say so in here, does it?

A. It says up above, 70 per cent, in (a) paragraph; yes, sir.

Q. But you didn't bid 70 per cent, did you?

A. I did not. That is the reason I said that, sir.

Q. My only question is whether you read paragraph 3(b). That is all I want to know, sir.

A. We did, sir.

Q. What?

A. We did.

Q. Now, you recognized after having read paragraph 3(b) that the distributor of this motion picture, United Artists, acting on behalf of the producer, Stanley Warner, wanted to reach an agreement with you with respect to operating expense of your theatre, didn't you?

A. Up there only as it concerns a 70-30 deal, sir.

(2636)

Q. Oh, well, then, in other words, you say that this operating expense statement that you did submit was just a superfluous thing, it didn't mean a thing, right?

A. I didn't say that, I am referring to Paragraph B that you are referring to.

Q. All right.

A. My deal is below this, sir.

Q. I understand what your deal is, I am not talking about your deal.

A. I have completed the expense rider, sir.

Q. No, wait. Just listen to my question: When you addressed yourself to filling out this application.

A. Yes, sir.

Q. Bid application. You told me that you read Paragraph 3-B, is that right?

A. Yes, sir.

Q. And having read Paragraph 3-B you knew that United Artists, the distributor, wanted to reach an agreement with you as to the operating expense of your theater.

A. Yes, sir.

Q. Isn't that so?

A. Yes, sir.

Q. And you also realized from reading this Paragraph 3-B and the language that I have just read, that if you wanted

(2637)

to make a bid on the basis of the 10 per cent profit guarantee, you would have to file an operating expense rider in conjunction with this bid application; isn't that so?

A. But I didn't make it on that basis, sir. If I had filled out in conforming with the terms contained in Paragraph 3 that would hold true, sir, but the deal that I submitted to them, and which they accepted. is not a 70/30/10 deal, sir.

Q. I didn't say that it was. Now, let us not get sidetracked on your bid, I am going to come to it. But the point is that you knew, no matter what your terms were, that the United Artists Corporation which sent these papers to you for you convenience and for your use in submitting an application—it had to contain a statement of your operating expense before they could appraise your offer; isn't that so, isn't that what this language reads?

A. The language reads in that paragraph, sir, that they are assuring me of 10 per cent if they accept this.

Q. All right. I am not asking you about that. What is the answer to my question? Didn't you know when you made this bid—let us try to make it simpler for you. Didn't you know when this bid was made and you were preparing these papers to make an application for this motion picture, which

(2638)

grossed higher than any other film which you exhibited, that you had to submit to United Artists as part and parcel of your proposal an operating expense rider setting forth the expenses of operation of your theater?

A. I did, sir.

Q. Didn't you know that?

A. I did, sir.

Q. I know you did, but I said—

A. Not on the basis as contained in Paragraph 3.

Q. I am not talking about on a basis, I am asking you whether you didn't know that you had to submit an operating expense rider at the time that you submitted your application.

A. I did, and I submitted it, sir.

Q. All right. Now we have that.

Now you also knew that when you submitted that operating expense rider the United Artists Corporation wanted that information to assist it in appraising the bid application, didn't you?

A. Yes, sir.

Q. Now, coming down to the next paragraph, Paragraph 4, the only sentence of which, so far as I am presently concerned that is important is the last one, being: However, we will not reveal any information regarding your expenses which is submitted on a printed form of operating expense rider.

(2639)

A. Pardon me, where is this, Mr. Ward? I don't see it.

Q. The very last sentence of Paragraph 4, beginning with the word "However," as I just read it.

A. Right, sir.

Q. So that when you submitted your application for this motion picture you knew that United Artists would keep confidential and would not disclose to your competitors or anybody else the confidential information with respect to the operation and the operating expenses of the Viking; you knew that, didn't you?

A. Well, I was assured of that, sir, but that can't be true.

Q. But you knew that that assurance was in this contract, right?

A. Yes, sir . . .

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Q. Now, passing to Paragraph 1 of your bid, your bid was a minimum guarantee of $65,000 with an arrangement of what

(2640)

is called 90/10, which means that the distributor gets 90 per cent, and the exhibitor, your Viking, get 10 per cent, after payment of house expense of $4970.19, is that right?

A. But not 10 per cent profit, Mr. Ward.

Q. But if I read it correctly that was your bid?

A. This part you read correctly. Up here you assured me I was getting a 10 per cent profit.

Q. I didn't say that I was giving you any assurance, I was reading the words of the contract that you signed.

A. Yes, sir.

Q. Wasn't I? All right.

Now, then, I will come back to the bid. I have correctly quoted from this contract the terms of your bid, have I not?

A. The lower portion, yes, sir.

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